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ABSTRACT

Designed to help school business managers understand management-labor relations, this handbook outlines a managerial approach to negotiations designed to protect the local educational agency's needs. The principles and philosophy of negotiations as well as its legal setting are presented in the introduction and first two chapters. Chapters 3, 4, and 5 discuss the role and involvement of educational management staff in preparing for sound management-labor relations. The form and process of negotiations are highlighted in chapter 5 on the "negotiations table." The next three chapters discuss psychological aspects of negotiations and also focus on the characteristics of the negotiator and the employee group. Chapter 9 deals with negotiation tactics and chapter 10 looks at how to analyze the actual costs of contract demands. Chapter 11 covers conflicts between parties at the table. The implications of and strategies for dealing with all aspects of strikes can be studied in chapter 12. Chapter 13 deals with the administration of the contract at the site level. Chapter 14 looks at negotiating merit pay for administrators. The book concludes with a presentation of current trends in negotiations. A lengthy appendix includes glossaries, examples of contract provisions, and a hypothetical factfinder's report. (Author/JM)

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## *A Sourcebook for School Business Officials, School Board Members and Other School Administrators*

**Edited By Dr. Lewis T. Kohler**

Association of School Business Officials of the United States and Canada

EA 014 277

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# Negotiations and the Manager in Public Education

## *A Sourcebook for School Business Officials, School Board Members and Other School Administrators*

**Edited By Dr. Lewis T. Kohler, RSBA**
**Chairman**
**ASBO Negotiations Research Committee**

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# NEGOTIATIONS AND THE MANAGER IN PUBLIC EDUCATION

A Sourcebook for School Business Officials, School Board Members,
and Administrators

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# FOREWORD

The school business official of today and tomorrow must be highly trained and thoroughly prepared to fulfill his broad responsibilities to society. To guarantee the continued existence of our way of life demands high-level competence and a singular devotion to the profession of education while providing quality professional leadership in the field of school business management.

In fulfilling professional responsibilities with honesty and integrity, the school business manager must understand management-labor relations, its principles, its policies, its strategies and its structure. Few areas in the domestic life of our society are vested with greater public concern than the field of management-labor relations in the public sector. The development of improved relations between public sector education employers and organized labor, and the integration of these relationships with the interest of citizens and society as a whole constitutes one of the most serious issues facing our economic and social systems today.

Awareness for the need for changes in the financial structure of education, recognition by governing boards of the value of negotiations as an effective means for balancing opposing forces, interests and needs under mandates enacted in many states and provinces, formulation and adoption of underlying policies and principles of negotiations in school districts and upgrading the knowledge and skills of school business officials in management-labor relations, are prerequisites for all who profess to be professional leaders in the school business and school finance fields.

This technical and substantive volume provides the profession of school business management in North America with a valuable tool -- one which helps the educator-leader of today and tomorrow understand management-labor relations as an important professional task in the modern operation of a school district. This book does not represent an automatic pattern or formula that may be readily adapted or utilized by a specific school business office or school district. Rather, as the title indicates, this has been prepared as a reference and guide which you can adapt to your own specific needs and requirements in developing your own Management-Labor Relations policies and strategies. The information contained in this publication is essential to an understanding of management-labor relations in the schools of the United States and Canada. By thoroughly understanding the contents of this book, school business officials will provide a service to themselves and to members of their respective staffs. In addition, they will have taken another step toward enhancing their professionalism and thereby creating through this instrument a greater service to their Association and to their school district's clientele -- the students in the classrooms.

Committees must usually depend on a few key people for their successful achievements. The ASBO Negotiations Research Committee was fortunate to have the spirited efforts of many of its members in developing this publication. Special acknowledgement and appreciation are hereby expressed to the Chairman of the Committee, Dr. Lewis T. Kohler and to Dr. John L. Grogan, Chairman, Completion-Revision Subcommittee.

Kent J. Abel, RSBA
1979 President
Association of School Business
Officials of the United States
and Canada

American Fork, Utah
October 1979

# PREFACE AND ACKNOWLEDGEMENTS

This sourcebook is the first of its kind...a unique volume created by the Negotiations Research Committee of the Association of School Business Officials. It is the result of more than three years of concentrated efforts. The Committee began to collect preliminary drafts of proposed chapters written by its various members in 1977. At ASBO's 1978 Annual Meeting in Washington, D.C., a commitment was made by the Committee to revise, update and supplement the material developed the previous year. A Subcommittee was appointed to spearhead this completion

The list of contributors to this sourcebook is extensive because of the variety of roles played by members: contributing authors, editors, major authors and/or critics. At times, individual members of the Committee served in a multitude of capacities simultaneously. Our thanks to everyone who had a role in the preparation of this document.

A sourcebook implies that it is a beginning, a starting point in the serious study of employee/employer public sector labor relations. The variety of material included in this volume covers the spectrum of negotiations from preparing for negotiations through the various stages, up to and including, the administration of an accepted collective bargaining agreement. Viewpoints are presented by contributors from Pennsylvania, Ontario, California, New York, Maryland, Michigan, Arizona, Oklahoma and Illinois. This results in a cross-section of thought that reflects the varying degrees of formalized negotiations that have developed in North America. The Appendices, Glossaries and Bibliography provide the reader with an excellent reference source to begin serious study, prepare for negotiations or to research a topic related to the negotiations process.

This document is not to be considered as complete and will need updating periodically to reflect changes in statutes and the courts' interpretation of legislative intent. Underlying principles and strategies will remain the same and these are the invaluable reference points in this sourcebook.

Every person at some point in his life is a negotiator, whether the problem is who will drive the family car on Saturday night or which program of instruction will be eliminated due to lack of funds. In many school districts, Negotiations is a formal process, established by law, while in others, negotiations still have a small "n". Regardless of the situation in a school district, this sourcebook is intended to present food for thought in the minds of managers in public education who are involved in any type of negotiations.

The experience of working with school business officials from across the United States and Canada has highlighted the vast similarities we all share but also brought to bear the unique problems dictated by local conditions. Each passing day presents new problems to evaluate, to refine, to resolve. This sourcebook is meant to be used as a guide, not as the only method which will result in successful managementlabor relations. Read it, reflect upon it, cast out those points which do not fit your individual style, try those areas that seem appropriate for your own situation but above all, use the suggestions, techniques and methods that fit your individual style in dealing with people and follow the philosophy of your school district.

This sourcebook presents important information regarding the foundations of management-labor relations in public school districts. Principles, philosophy, legal setting for Negotiations as well as an introductory look at the overall purpose of the sourcebook are presented in the Introduction and first two chapters.

Chapters 3, 4 and 5 discuss the role and involvement of management staff in preparing for sound management-labor relations in public school districts.

An important segment of the total negotiations process is presented in Chapter 5, "The Negotiations Table." A number of chapters, namely, 6,7 and 8 discuss pertinent information about the psychological aspects of negotiations as well as a discussion of the characteristics of the negotiator and the employee group which sits on the other side of the negotiations table. In addition, Chapter 11 covers information about conflicts between parties at the table.

Two significant presentations "Tactics of Negotiations" and "Costing Contract Demands" are covered in Chapters 9 and 10.

The implication and strategies and procedures for dealing with all aspects of strikes can be studied in Chapter 12.

Understanding the duties and obligations of the first-line supervisor can be enhanced by reading Chapter 13. That chapter emphasizes the importance of adequate guarantees that procedures required by the written agreement between the parties are effectively established and managed at the site levels.

Users of the sourcebook will find Chapter 14, "Negotiating Merit Pay for Administrators" of particular interest.

Chapter 15 discusses trends in negotiations. It presents a brief historical overview of negotiations in public school districts and concludes with more than two dozen examples of trends grouped under four major headings: Multi-Year Contracts, Salaries, Fringe Benefits and School Management.

A series of Appendices, containing selected items or importance, is included. Of particular value to users should be the two Glossaries and the extensive examples of Illustrative Contract Provisions. In addition, a fictional Fact-Finder Report can be utilized as a model for the individual aspiring to be a Fact-Finder.

The sourcebook's final contributions are extensive bibliographies of periodicals, books, monographs, dissertations, resources and organizations and collective bargaining games.

Sincere and deep appreciation is expressed to Sandra Grogan (Pennsylvania), Judith Jablonski (Pennsylvania), Kent Abel (Utah), Shirley Ackerman (Pennsylvania), David Allen (Illinois), Dr. Theron Arnett (California), Samuel Donato (New York), Dr. Frederick W. Hill (New York), George M. Johnson (North Carolina), Darlene and Erika Kohler (California), Dr. William Leary, Jr. (Pennsylvania), Velva Oakland (Colorado), Regina O'Donoghue (California), Charles Stolberg (Illinois) and William Zimmerman (California) for their unique and inspiring contributions without which this publication would not have been possible. We thank them for their dedicated service to the field of education and to the Association of School Business Officials of the United States and Canada.

Dr. Lewis T. Kohler,
Chairman,
ASBO Negotiations Research Committee

and

Dr. John L. Grogan,
Chairman,
Negotiations Sourcebook
Completion-Revision Subcommittee,
ASBO Negotiations Research Committee

# ABOUT THIS BOOK

This volume is the result of more than three years work by the Negotiations Research Committee of the Association of School Business Officials of the United States and Canada (ASBO). Several dedicated members of the Association made vital contributions to its development.

The project to develop this sourcebook began in 1977 when an original manuscript draft was prepared by the Committee under the leadership of its Chairman, Samuel Donato. Dr. Lewis T. Kohler assumed the position of Chairman in 1978, and, under his leadership, the original draft was revised, updated and expanded through the efforts of a subcommittee. This Negotiations Sourcebook Completion Revision Subcommittee was chaired by Dr. John L. Grogan.

The Committee assembled this volume as a sourcebook with the reader in mind. Each chapter is self-inclusive and can be read and analyzed individually to research an appropriate subject area or to gain additional information on a specific topic. Or, it can be read cover-to-cover to gain a complete overview of collective bargaining in school districts.

For ease of reading, all footnotes appear following the Appendices and are listed sequentially, by chapter. Figures within each chapter -- charts, tables and so on -- are also numbered sequentially, beginning with I in each chapter.

About one-half of this sourcebook consists of Appendices, Glossaries, References, Bibliographies and Contributors. This material is just as vital to understanding the negotiations process as the text. The Appendices include numerous samples of essential information. Understanding the terms presented in the two Glossaries is a must for school administrators involved in any aspect of collective bargaining. The References, presented in chapter order, list additional sources of information quoted within the text as well as sources available for study. The list of Contributors presents additional information about those dedicated ASBO members who contributed to this volume.

The ideas and opinions expressed in this volume are those of the authors of the respective chapters and are not necessarily the views or policies of the Association.

# INTRODUCTION

## PURPOSE OF HANDBOOK, PRINCIPLES AND PHILOSOPHY OF SCHOOL NEGOTIATIONS

By Dr. Lewis T. Kohler, RSBA

School negotiations have introduced a new, operational way of life for most local educational agencies. Reverberations from the impact of the clash, or the anticipated clash, between traditional, unilateral school management-labor relations approaches continue, and will continue, to shake up what has been a fairly stable educational environment.

School negotiations and school management-labor relations should not be viewed by district boards of trustees, superintendents and business managers with trepidation. Such an attitude will establish a situation where school negotiations will be a continuing source of problems and irritations rather than an appropriate means of resolving differences. The acceptance of the process of school negotiations by the governing board and administration-management staff as an appropriate and tested (both in private and public sectors) system for resolving many problems, can assist in establishing a more positive management-labor relations program throughout an entire district and a community as a whole. Essentially, school negotiations strive to resolve problems sparked by friction between district needs and human needs.

Underlying this Sourcebook is the conviction that school negotiations between an educational agency and a recognized bargaining unit representing school employees is an effective means to balance district and human needs. Governing board policy should express the recognition that active involvement by school employees in the formulation and implementation of personnel policies, practices and procedures affecting their employment conditions will benefit the efficient administration of a school district. In order to balance these somewhat conflicting district and human needs, advocates at the school negotiations table must present rationales which support their respective positions. After consideration and analysis of existing problems from both points of view, it is assumed that reasonable individuals can structure a formal resolution acceptable to both parties and the public. Since all problems are necessarily adversary, school management may be surprised that, many times, labor units can present good, constructive ideas and proposals to resolve problems of concern to both sides. The process of school negotiations will bring critical problems to the "forefront" for full consideration and action.

School negotiations can be an effective means for balancing opposing interests and needs. Public sector management-labor relations programs seem to be on a course which will require a governing board and district administration to negotiate on an ever increasing variety of subjects. A district and its negotiating team must be ever vigilant so that certain items and issues are safe-guarded and never negotiated (i.e., management rights) and to assure that amendments to existing state and federal laws never permit negotiations on such issues.

This ASBO Sourcebook on School Negotiations outlines a managerial approach designed to protect a local educational agency's (LEA) needs and to garner benefits through a bilateral approach to school administration, management and operation. While this Sourcebook is designed to assist school management, it is not intended to be a handbook on how to win in school negotiation sessions. It should serve, however as a guide to assist superintendents, business managers, personnel managers and other administrators resolve the specific problems of each school or district work site in the interest of all concerned parties--the governing board, administration, management, union, individual employees, and hopefully, the public at large.

## Underlying Principles of School Negotiations

School negotiations activities and programs should be based on these underlying principles:

1) The public interest requires high standards of school management and employee dedication and performance, and the continuous development and emplementation of modern professional work practices to facilitate such high dedication and performance;

2) The well-being of teachers, other staff personnel, and the efficient administration of the school district are benefited by giving all employees an opportunity to participate in formulating and implementing sound personnel policies, procedures and practices that affect their working conditions;

3) The participation of employees in the school negotiation process through representatives of their choice in board-recognized bargaining units, is an appropriate means of achieving these objectives; and

4) Such participation should be established, maintained and improved by constructive and cooperative ventures between the governing board, administration and recognized bargaining units of district personnel.

School districts should adopt principles such as those outlines above since their adoption will represent a clear statement of the respective rights and obligations of union organizations, the local administration and the school district's trustees. The adoption of such principles will also effect a uniform, education-wide negotiations program for the first time.

## Establishment of a Basic Principle

The course of teacher union-school board negotiations appears to continue as ritualistic as always but with far greater intensity and tenacity. In the process of responding to teacher union proposals, school boards tend to overlook, at times, the more fundamental thesis of a union request: partnership.

It is on this very statement of "partnership" that the matter of teacher union requests must be considered. In essence, the matter of class sizes, pupil-teacher ratios, dealing with surplus or redundant teachers, and the like are only segmental to the overall principle of "the role and duty of the locally elected representative" and the principle of accountability.

What has been missing from teacher union presentations is the recognition and determination that the rights of the people in a community, voiced through their duly elected representatives, will determine the kind of education they want for their children. Teachers as professionals should be involved in the formulation of educational policy but through the consultative process. School boards recognize their role to establish priorities, aims, objectives and policy determinations with final determinations remaining with the board. Consequently, the board, as the "accountable public body", must by necessity address itself to the economic realities of the day. It would appear that conflict has arisen on this basis.

The syntax of the teacher proposal has many forms, but the fundamental point is that teachers wish to be "partners" in the educational policy. This raises a host of political, ethical and value questions. Are teachers, through teacher unions (not accountable to the public through the mechanism of representative government) to be accorded equal partnership (in a political sense) in the education of children? As has been noted in research, it is inconsistent with the democratic concept of "representative government" to allow those people, professional though they may be, to formulate educational policy, either on a philosophical or operational level without accountability to the public.

> The Pennsylvania Labor Relations Board put it this way:
>
> "All the professional goals of the respondent (employee union), which are laudable but which have no place in the content of an employment contract since they infer that the school board and the education association are partners in the education of children. They are not. The teachers are employees. The policy making function in the public schools belongs solely to the school district and its board of directors and their duly authorized agents." [1]

To the degree that educational policy would be negotiable rather than utilizing the consultative approach, school boards would be transferring their decision-making powers to teacher unions. The concept of "trusteeship" is homogeneous with that of representative government. The establishment of school boards and trustees was in keeping with the component concept of "accountability". If any matter falling within the realm of educational policy is transferred from school board control to a teacher union, then trustees could no longer be held accountable for decisions or changes in policy which did not emanate from the board. The question remains, then, who is accountable? Under our present system of government, teachers ( and certainly unions ) are not accountable, for they do not have to answer to the public. But how can trustees be held accountable, if through the pressure of negotiations, negotiations impasses or third party intervention, their decision-making function has been usurped? Should the public disagree with any change in educational philosophy or practice, whom do they seek out as accountable? Evidently, there is no clear cut answer.

In essence, the democratic concept of representative government would no longer apply, for it would be a teacher union (not accountable to the public) that is the key decision-maker rather than the trustees who are directly accountable to the public. In fact, one could take the argument a step further and state that should educational policy be negotiated by force or statute or be arbitrated, then in the long run the function and role of a trustee would be an anachronism, since trustees would no longer meaningfully represent the "public interest". Trustees would be divorced from the accountability concept, yet there would not be any other mechanism to replace it. Presently, should the public disagree with trustee educational priorities, standards of education, educational planning and so on, that public can voice its disapproval and force change by holding those trustees accountable at election time. Even philosophically, how does one hold teacher unions accountable? To this date, learned educational experts have failed to provide a better alternative to direct "accountability" than the present system of representative government.

This does not mean that every citizen loves his school board or that everything a school board does at the local level is met with universal acclaim. Nevertheless, a school board is not a labor union out to protect and advance the interests of its members. It is a duly elected body of public servants whose only mission is to give children a chance to make it in a very uncertain world. A school board may look and act like a board of directors of a private corporation, but the stock-holders it represents just happen to the citizens of a community. A school system is a public interest corporation and its school board is there to see that the system works for the benefit of the public. School boards are not anti-teacher nor anti-teacher union. But, they cannot support the negotiation or arbitration of "educational policy" which would undermine their legal obligations to make management decisions in what they believe to be in the public interest.

This brings one face to face with the philosophical and value base underlying the democratic system of representative government. It is no longer merely a question of manipulating the political mechanism through which people we will be governed, but raises the fundamental question of "Who will govern?"

## School Negotiation Policy and Philosophy

Each LEA should develop, adopt and issue a statement of school negotiation policy and philosophy. A school district's negotiations policy must be developed to provide concrete, specific and overall guidance for all members of the school management team. In addition, there must be consistent implementation and application of the policy by all district managers in identical circumstances and situations. All administrators must know and understand what a school district's negotiations policy is and how it is to be implemented by the individual site manager. The policy and philosophy are much more than a restatement of the principles of school negotiations established by the governing board. They must provide even more definitive guidance and direction to management on very specific areas of concern. This guidance shall be developed by school administration and management without negotiation or any consultation with a union. Obviously, attitudes of a union and its representatives, union rights and actions and specific concerns of union members must be taken into consideration.

Addressed must be such specific matters as: staffing; staff relations; a district's structure to handle and process management-labor relations training and in-service education for the administrators, role and responsibilities of the school management team, union relations, and, other related matters and issues.

Even though specific matters are addressed, a statement should not be a rigid presentation or listing which would leave no authority or responsibility for managers to make their own decisions based on circumstances at the respective sites. Most of all, a policy and philosophy must manifest a continuous commitment to sound and efficient school negotiations policy development under existing state and local statutes and regulations. Since policy articulated under one governing board will have an impact upon policies adopted by subsequent governing boards, great care must be taken to adopt a practical policy. In addition, actions and decisions made in implementing such policies over months and years will force remolding a rethinking of a school district's negotiations policy and philosophy.

School administrators and business managers can use the following questions as a starting point in preliminary development of a statement of school negotiations policy and philosophy suitable to their local educational agency. These questions are merely suggestions and do not constitute a complete listing, nor is it suitable for all local educational agencies. The questions should not be used as a checklist or become part of a checklist approach to overall school negotiations permitting no leeway in the role and responsibility for site managers to properly conduct their operations.

I. During An Unorganized Period of the School Negotiations Process

A. How will all school employees be informed of their rights to organize or not to organize?

B. How will school administration assure that all school employees are adequately and fully informed of these rights?

C. What are the school negotiation roles and responsibilities of the district administration? Business manager? Principals? Assistant principals? Personnel director and staff? Staff relations officer? Budget director and staff? Individual board members? Governing Board of Trustees? Legal advisor?

D. How will school administration insure that there is no interference, restraint, coercion or discrimination practiced against school employees in the exercise of their rights?

II. Organized Period of the School Negotiations Process

A. What is a school district's policy regarding a union's use of district facilities, services and communications channels during an organizing period?

B. How will a school district's administration and management deal and treat competing unions during an organizing campaign period?

C. How will a school district's management deal and treat full and part-time union organizers during an organizing period?

D. How will a school district's administration deal and treat anti-union organizations and influences during an organizing period?

III. Appropriate Bargaining Unit Election Period of School Negotiations Process

A. What is a school district's policy with regard to what constitutes an appropriate bargaining unit for the purpose of school negotiation?

B. What are a school district's criteria for supporting, opposing or remaining neutral toward respective bargaining units as requested by a union?

C. What are a school district's criteria for excluding supervisors, managerial staff, principals and other confidential employees from a proposed bargaining unit?

D. What should, or should not, the school administration do to encourage a maximum turnout and vote during an election for the purpose of selecting a bargaining unit?

IV. Certification of Bargaining Unit and Preparation for School Negotiations Period

A. What are a school district's philosophy and actions in dealing with an approved bargaining unit?

B. What are a school district's philosophy and actions in dealing with individuals or groups of district employees within a bargaining unit?

C. What are a school district's philosophy and actions in dealing with district employees outside a bargaining unit? Members? Non-members?

D. What are a school district's philosophy and actions in dealing with principals, managerial staff members and other administrative and management team members?

E. On what topics will a school district administration consult with a bargaining unit?

F. Which person(s) will actually do consultations for a school district and under what circumstances?

G. What will be the roles and responsibilities of a school district's management team members in preparing for actual negotiations?

H. Which person(s) will serve on a school district's negotiations team and what authority will, and will not, be delegated to them?

I. What are a school district's short-term and long-term goals and objectives in school negotiations?

J. How will members of a school district's administration team communicate to provide optimum line and staff data and information?

K. What is a school district's policy on vital issues, such as: promotional examinations boards and service by union members: types and details of grievance procedures; release time with pay for union negotiation team members; expense charges against union for dues deductions; performance and productivity evaluations; and joint cooperation in equal opportunity and other related concerns and issues?

V. The Actual Negotiations Period

A. How will school management keep its district negotiating team informed of employee attitudes and philosophy and possible operational costs and problems with union demands and proposals?

B. How will school management communicate actual developments at the negotiation table to members of the school management team? To employers? To the governing board? To the public at large?

C. What are the rights of administration and management and how can they best be guarded and preserved?

D. What is a school district's posture concerning "third party" involvement during "impasse" of school negotiations?

E. What are a school district's philosophy and action on the issue of negotiability?

VI. Administration of Agreement Period of the School Negotiations Process

A. What are the roles and responsibilities of management team members in day-to-day administration of a signed agreement?

B. What will school district administration do to provide management-labor relations staff support to principals and other line managers?

C. What is the governing board and administration philosophy in administering a signed agreement?

D. How will school district administration educate and train its entire team to uniformly interpret and apply the provisions of a signed agreement?

E. Who will be the administrator responsible for maintaining duplicate copies of the historical file of the actual experience of a school district under a signed agreement including, but not limited to, each grievance filed, processed and action taken keyed to each specific provision of a signed contract?

F. How will mid-term school negotiations take place under a signed agreement for the purpose of making day-to-day adjustments in an agreement, for resolution of problems not covered by an existing agreement and for protection of rights already recured by an existing agreement?

G. Which school district administrators and managers shall serve on a Management-Labor Relations Agreement Committee to channel and resolve mid-term school negotiation programs, share information and provide for discussion of problems of mutual concern during the term of a signed agreement?

## Chapter 1

# THE LEGAL SETTING FOR NEGOTIATIONS*

By Edward F. Gwiazdowski

The concept of collective bargaining between school districts and employees is still a relatively new one. Many people, including taxpayers and even school administrators, are not quite sure whether this concept is entirely legal. Do school districts have to bargain collectively with their employees? What are the procedures for establishing recognition and commencing collective bargaining? What are subjects that can be negotiated and what are the steps of the negotiation procedure? These are a few of the many questions raised in this chapter which also provides an overview as to the number of states that have passed legislation permitting or not permitting collective bargaining. Recommendations for items that are subject to negotiation and those that are not negotiable are also presented in this chapter.

It would be a long and tedious job to sit down and research the case study books, arbitration reports, mediation hearings and the endless array of state laws and administrative rules and regulations to identify the major thrust that has given public employees today their clout within the public school environment. This chapter will attempt to bring together some of the broad-based legal concepts that have evolved over the years to provide a feeling for the width and depth of the legal basis for school negotiation.

The years since World War II, particularly the 60's and 70's, have seen a strong sentiment in state and local governments for giving public servants a voice in their own working conditions. Employees who traditionally had no involvement with organized labor joined associations that, as the years passed, began to act more and more like labor unions. At the same time, industrial labor unions began to set up white-collar divisions for employees in jobs that historically had been non-union.

As the movement toward a voice for public employees gaines strength, individual states began to pass public sector bargaining laws. At least some provisions in every comprehensive state bargaining law may be traced directly to the private sector's National Labor Relations Act (NLRA). The 50 states offer an interesting look at "what might have been" if the legislators who produced the Taft-Hartley Act had been subject to a different set of political pressures and obligations.

Despite difference between states (some have no law at all while Washington has nine) it is possible to generalize about public sector labor relations, particularly in contract to the private sector. Most of the states that have passed laws have refused to give employees or their union laborers traditional weapons. Only a few states permit strikes (Hawaii, Oregon, Minnesota, Pennsylvania). Picketing by off-duty employees is generally banned as well, though several states that prohibit strikes allow off-duty picketing (Illinois, for example).

The states with bargaining laws have drawn heavily on the NLRA in writing provisions on coverage, bargaining units and unfair labor practices. But the tactical importance that these areas have for the private sector union or employer are diminished in the public sector by one overriding consideration: even if a union gets the bargaining unit it wants, wins an election and has a state agency to take complaints to, it probably will be unable to get the contract it wants unless the public employer wants it to.

The importance of a bargaining requirement in each state's law, together with the strike ban most states have, cannot be overstated. The typical law requires a public sector employer to bargain in a good-faith attempt to reach an agreement. But, if an employer rejects a union's proposal and counters with a lower offer made in good faith, it can, in most states, stay with that offer and leave the union nearly powerless to force better terms.

In terms of strategy, an employer in most states can, if he chooses, see contract negotiations go to impasse. Since states generally ban strikes and have rejected binding arbitration to end impasses, a typical law simple leaves a union or employee organization with no muscle. A union may be able to exert political pressure on an employer, as a number of states with bargaining laws have tried to cultivate public opinion. It is typical for fact finding, the last step in many impasse procedures, to end with public release of the fact-finder's contract.

Following are summaries outlining some of the major topics in negotiations. By no means are they intended to be complete in themselves, but rather an attempt to put together a brief outline of what one can expect to find from state to state. Comparisons will be made between states and the significance of the statutory provisions that do not exist is explained where labor or the employer might find some strategic or tactical importance. Because public sector labor relations is a recent and rapidly growing area of law, many legal arguments in one state, as well as statutes and ordinances, are based on practice in a neighboring state.

## Coverage

Approximately 35 states have enacted laws that allow self-organization and collective bargaining for at least some groups of public employees within the state. Which employees have these rights by law in a particular state is the subject of discussion in this section. Some states have laws that specifically prohibit collective bargaining for public employees.

Groups of employees commonly covered are teachers, fire fighters, policeman, other county or municipal employees and state employees, including those in the Civil Service. Health care employees, transit system employees, nonprofessional school employees, college professors and others may also be encompassed. In some states, local governments may choose whether or not to be covered by the state's collective bargaining law for public employees.

Supervisors and managerial employees, as well as elected or appointed employees, generally are excluded from collective bargaining rights on the grounds that these rights would conflict with their loyalty to the employer. In Norbeck vs Davenport, Community School District, (CA-8;1976) 2PBC, the Court ruled that an employer did not violate a high school principal's freedom of association when it refused to renew his contract because of his active role in collective bargaining negotiations. However, some states do allow lower-level supervisors to organize and bargain, but confine them to separate bargaining units.

## Union Recognition-Elections

Procedures have been adopted by various states for selecting and recognizing public employee representatives for the purpose of collective bargaining. These procedures deal with the right to organize and to bargain collectively. Although voluntary recognition by an employer may be possible, most states provide an election procedure for the determination of a bargaining representative.

In states that have enacted public employee bargaining laws, a public employer generally must recognize a representative selected by a majority of employees in an appropriate bargaining unit. In some states, presentation of signed union cards or check-off authorizations from a majority of unit employees may be sufficient to invoke an employer's duty to recognize and negotiate. However, most states have established some form of election procedure for the selection of representatives. These are usually administered by a state agency. In some states, the laws appear to contemplate an election as the sole determination procedure. In others, it merely is an alternative to voluntary recognition.

With some variations, the election procedure usually begins with a petition filed by a labor organization for a secret ballot election. Employers also may file petitiona. However, an election will not be held if a labor organization fails to provide an adequate showing of interest among employees, usually 30%.

Elections usually are of two types: consent and directed. Consent elections are the least time-consuming, since the parties stipulate as to such matters as the appropriate unit and the eligibility of particular employees to vote. If the parties fail to reach such an agreement, the state agency must decide these issues and may have to call a hearing before directing an election. In this situation, the election is called a directed or contested election.

Most states will deny elections in some circumstances in an effort to promote a measure of stability in public employee labor relations. They will not allow a new vote, for example, or a possible change in bargaining representatives every month. Generally, a valid existing contract between a public employer and a labor organization will bar an election. However, many states do provide that a petition for a new election will be allowed within a specific 30 or 60-day period shortly before a contract is due to expire. Some states will also allow elections during the first year of a union's certification, within 12 months after another election or while an unfair labor practice charge is pending.

Parties to a representation election generally may file objections to conduct allegedly affecting the outcome of the vote. They may also challenge votes by people they consider to be ineligible to cast ballots, such as supervisors. State agencies may review these challenges and objections and may call for a new election. In Hollywood Ceramics Co., (140 NLRB 221, 1962 CCH NLRB) the National Labor Relations Board established a policy of setting aside elections of the basis of material misrepresentations during a campaign, which represented a substantial departure from the truth or to which the other side did not have an adequate opportunity to reply.

In Shopping Kart Market, Inc., (228 NLRB No. 190, 1977-78 CCH NLRB) the NLRB abandoned this policy.

Election mechanics, including restrictions on campaign conduct, election objections, ballot challenges and voter eligibility are all matters that must be thoroughly reviewed by a school district well in advance of organization of employees within that district in an effort to insure everyone's rights are adequately protected from the very beginning.

Many states provide for elections to decertify an existing unit representative, as well as to certify one.

## Bargaining Units

A public employer's duty to meet and confer, negotiate or bargain collectively is limited to an appropriate unit of employees. An appropriate unit is not necessarily coextensive with an employee's entire work force. What constitutes an appropriate unit for collective bargaining by state and local government workers? Each state has specific rules for particular groups of employees in the public sector.

In some states, the law refers to bargaining in "an" appropriate unit. This language leaves open the possibility that more than one unit may be appropriate. Other states direct negotiations in "the most" appropriate unit, while for some public employees the statute says what the appropriate unit is. Thus, a law may state that all certified teachers in a school district comprise the appropriate bargaining unit. Some states may use one approach for one group of employees and another approach for other employees.

Power to determine an appropriate unit for bargaining most often is vested in the state agency in connection with its' authority to direct elections. However, provision frequently is made for parties to reach agreement on a unit prior to an election. Also, some states allow local officials to establish the appropriate unit consistent with the provisions of the statute. Factors most commonly utilized by state agencies in making unit determinations are community of interest, bargaining history, efficiency of administration, employee desires, nature of work and similarity of working conditions.

## THE BARGAINING UNIT

### BASIC ISSUE: COMMUNITY OF INTEREST

* Similarity of Duties and Responsibilities
* Interchange of Duties, Responsibilities, Jobs, Tasks and Work Assignments
* Similarity of Skills, Training and Education
* Similarity of Pay Systems and Methods
* Similarity of Fringe Benefits, and Hours of Work
* Common Supervision
* History of Past Practice of Separate Representation
* Structure Emphasizing Freedom of Employees to Exercise Their Negotiations Rights

## THE BARGAINING UNIT

### BASIC ISSUE: EXCLUSIONS FROM THE BARGAINING UNIT

* First Level Supervisors/Managers
* Employees Administering Staff and Management-Labor Relations
* Security Personnel
* Professional Administrative Personnel of the District
* Employees Investigating and Auditing Tasks, Work or Conduct of Other District Employees
* Confidential Employees
* Personnel Employees and Administrators

Many states have adopted a policy against undue fragmentation of bargaining units even where more than one appropriate unit is theoretically possible. As a result, many state boards will opt for departmental, district-wide units of employees on grounds of ease and efficiency of operations. Smaller units may be discouraged from organizing if there is a substantial conflict of interest or difference in job skills or working conditions. On the other hand, professional employees generally are not grouped with nonprofessionals without their consent.

Where bargaining is permitted for supervisors, the supervisors are often placed in their own units apart from rank-and-file employees. However, in accordance with a policy against undue proliferation of units, low-level supervisors may be included in a unit with other workers in some states. Lieutenants and captains frequently are grouped with other employees of fire and policy departments, and university department chairmen often are grouped with other faculty members.

Bargaining units for certified public school teachers generally are district-wide in scope and exclusive of nonteaching personnel. In some states, principals, assistant principals and other administrators also have bargaining rights and may have their own units. Frequent questions involve the placement of such persons as coaches, teacher's aides and coordinators.

At the university level, unit disputes commonly involve the placement of department heads, deans, library personnel and part-time faculty members.

## Bargaining or Meet and Confer

A majority of states have accorded at least some of their public employees either the right to engage in collective bargaining or the right to meet and confer with their employer with regard to terms and conditions of employment. Do particular public employers, and representatives, have a duty to "bargain" or a duty to "meet and confer".

"Collective bargaining" can be defined as the mutual obligation of an employer and an exclusive representative to meet at reasonable times and confer in good faith with regard to mandatory subjects of collective bargaining. A salient part of the collective bargaining duty is to execute an agreement that has been reached during negotiations. Moreover, the duty to bargain in "good faith" may be considered to require an effort to reach agreement. However, it does not require an employer or union to agree or make concessions with regard to particular items.

On the other hand, a meet-and-confer, or meet-and-discuss obligation imposes only the duty to meet at reasonable times and to discuss recommendations or proposals submitted by a labor organization. Generally, there is no duty to agree or to reduce anything to writing. The meet-and-confer process, unlike the bargaining process, does not encompass negotiation of an agreement. California, Kansas and Missouri are among the states that have adopted the lesser obligation for at least some public employees.

One state, Oklahoma, has what appears to be a bargaining requirement, but which has been construed by judicial decision to be only a meet-and-discuss obligation. New Jersey's Supreme Court, in Lullo vs Fire Fighters (NY 1970, SCt, 1PBC) declared that the term, "collective negotiations," as used in that state's law has a different meaning than does "collective bargaining," and that the former was used to make public employers and employees realize that the process of bargaining as it is understood in the private sector cannot be transplanted to the public sector.

A few states provide that a public employer has a duty to bargain on some subjects but merely a meet-and-confer obligation with respect to other subjects. For example, Kansas and Indiana generally require school districts to bargain with representative teachers, but allow them merely to discuss with the representatives various aspects of educational policy such as curriculum. Hawaii imposes a duty to bargain on wages, hours and term and conditions of employment, and a duty to meet and confer with respect to aspects of managerial policy. Many states explicitly provide that no agreement may conflict with existing statutes or charters.

Not all public employees are covered by a bargaining or meet-and-confer law. Some states have laws only for some employees, while others have no law for any employees. The statutory silence has been construed by state courts in two ways. In Virginia and Tennessee, for example, courts have ruled that public employers are prohibited from bargaining collectively in the absence of an authorizing statutes. On the other hand, courts in Arkansas and Colorado have said that silence means that employers may bargain but have no duty to do so.

North Carolina law declares void any bargaining agreement executed by a public employer.

The duty to bargain goes beyond negotiations of a contract. Once a contract is negotiated, an employer has a duty to continue dealing with the selected representative of the employees. It cannot unilaterally change terms and conditions of employment that are subject to the collective bargaining procedure. A related issue may arise where, for example, a city takes over operation of a system from a private employer. Under the Federal Labor Relations Act, a successor employer generally has a duty to bargain with the representative of the predecessor's employees, but does not have to adopt an existing union contract. Iowa has adopted this rule for public employees.

The duty to negotiate does not arise for an employer until the employees' representative makes a request for negotiations. Many state statutes are specific as to when such a request may be made and as to how soon the employer must respond to the request. The timing requirement is usually related to budgetary considerations. Thus, a state may be interested in having the parties hammer out a tentative contract prior to the deadline for appropriating money for the wage increases and other financial terms of the agreement.

Appropriation of the money for a labor contract is an issue peculiar to public sector labor relations. Most states provide that, regardless of what the parties may agree upon during negotiations, wage rates and other financial terms of the agreement may not be implemented unless the necessary funds are appropriated by the city commissioners, the town meeting, the state assembly or other legislative body. If the money is not appropriated, the parties may have to renegotiate.

However, the executive ultimately responsible for negotiating a contract may have an affirmative duty to seek the necessary appropriations from the legislature.

## Bargaining Subjects

In the public sector, the range of subject over which an employer and an employee organization must negotiate are defined, at least generally, by statute. Basically, there are three classifications of bargaining subjects: mandatory subjects over which an employer is obligated to negotiate; permissive subjects over which an employer may negotiate if he desires to do so; and illegal subjects over which the parties may not negotiate. In a variation from the mandatory-permissive distrinction, some states require an employer to bargain on some subjects and to meet and confer on others.

The initial determination is whether a subject is bargainable or nonbargainable. Public sector laws differ from those governing private industry in that the prohibited bargaining subjects often are enumerated by express language in the statute. The prohibited subjects generally involve some aspect of management rights, the employer's function or a matter of governmental policy. Also, bargaining generally cannot be inconsistent with other existing laws. Common subjects excluded from negotiations are merit and retirement systems, educational policy, hiring, promotions, discharges, efficiency of operations and the function of the employer. In some states, the employer may talk about these subjects with an employee organization, but has no duty to bargain over them.

Most frequently, state statutes direct an employer to bargain over "wages, hours and other terms and conditions of employment," but then prohibits bargaining on specific subjects. Some states use variations from this language and the variations may be significant. For example, Connecticut laws refer to bargaining over hours for some employees, but not for teachers. The length of the school day is not a proper subject of bargaining in Connecticut. Some states are more specific than the general language quoted above and list up to 20 subjects of bargaining.

Of course, it is not always clear whether a particular item may be classified as "wages, hours and other items and conditions of employment". A teacher may consider tenure and class size to be conditions of employment, but a school board may see them as being within the province or management rights. Courts have taken different approaches to this problem. An increasing number of them have been using a balancing of impact analysis approach on a case-by-case basis. However, other courts have held that bargaining is required in the absence of a specific statutory exclusion, while still others have held that bargaining is not required unless the subject is specifically listed in the statute. Some courts have indicated that they will give great weight to NLRB rulings in the private sector. A few states, notably Iowa and New Jersey, allow parties to obtain declaratory rulings from the state agency as to the nature of the bargaining duty on a particular subject.

## Bargaining Negotiations

The duty to bargain entails the mutual obligation of the parties to meet at reasonable times and to confer in "good faith" with respect to appropriate subjects of bargaining. The "good faith" standard applied in private industry has been adopted by the states in their public sector labor relations laws. The standard requires a sincere effort to reach agreement on the bargaining issues, but does not require a party to agree or to make concessions on particular subjects. If an agreement is reached, then the agreement must be reduced to writing. A "good faith" standard also applies to discussions under a meet-and-confer law, even though the employer signs no binding contract.

Generally, a party may declare negotiations to be at an impasse after a reasonable perios of good faith negotiations, but some state laws declare how long bargaining shall proceed before an impasse will be deemed to exist. When an impasse is reached, the mediation and arbitration procedures may be invoked.

During bargaining, and after a contract is executed, a public employer usually is not free to unilaterally alter terms and conditions of employment without giving a union prior notice and an opportunity to bargain over the proposed change. However, many laws do allow employers to redress individual grievances in a manner consistent with an existing agreement.

In addition to the good faith standard, there uniformly are other statutory requirements relevant to the actual process of sitting down and hammering out an agreement. The public employer's duty to negotiate commences upon receipt of a request from an exclusive representative in an appropriate bargaining unit. Some states, for example Rohde Island, gave the employer a time limit in which to respond to the request. The laws generally contemplate that negotiations shall take place before the employer's budget is determined, so that the legislative body may respond to the agreements reached in negotiations. Many of the laws specify the period prior to budget-making deadlines during which negotiations must take place.

A number of states have open meeting, or "sunshine" laws that require government proceedings to be considered in public. A frequent issue concerns the application of this requirement to collective bargaining negotiations. In several states, actual negotiating is considered exempt from open meeting requirements, but the public can attend deliberations by the employer on approval of a final contract.

State laws often add prerequisites for a valid collective bargaining agreement. Some laws require contracts to have grievance procedures, no-strike clauses or other provisions. Some statutes specifically require that employees ratify a contract before it becomes effective. There also may be specific directives with regard to an employer's execution of a contract. Finally, statutes often declare an outside limit--usually three years--for the duration of a contract.

## Working Conditions -- Grievances

Procedures for the resolution of individual grievances by public employees may be provided for by contract of by statute. State statutes on grievance procedures generally follow one of two approaches. Many states, for example, Hawaii and Iowa, expressly permit public employers and employee organizations to negotiate a contractual procedure for the resolution of grievances, including a provision calling for binding arbitration. However, laws of this type generally also provide for arbitration services to be furnished by a state agency or establish statutory grievance-arbitration procedures that may be invoked in the event no contractual procedure is negotiated or invoked. The second type of law requires the parties to establish a contractual grievance procedure. Alaska, Florida and Pennsylvania are examples of states which mandate this latter approach.

Although the laws in most states provide that an employee organization is an exclusive representative in a bargaining unit, they also declare that the statute should not be construed so as to prohibit an individual worker from taking a grievance to his supervisor on his own. However, the laws may also provide that no individual adjustment of grievances may be inconsistent with an applicable bargaining agreement.

On the other hand, a union's status as an exclusive representative may preclude a public employer from denying an individual worker union representation in a grievance proceeding. Some states have adopted the golding of the United States Supreme Court in NLRB vs J. Weingarten, Inc., (76 LC. 420, U.S. 251) that an employer may not deny a worker union representation at an interview conducted for the purpose of investigating alleged employee misconduct. That case arose in private industry. However, the United States Court of Appeals at Boston has since ruled that a New Hampshire public employer did not have to allow representation at a grievance proceeding by a union representative who was not a co-worker of the grievant--Downing vs LeBritton (CA-1, 1977) 2PBC.

It is a general policy in private industry to require exhaustion of contractual remedies prior to resorting to court action or unfair labor practice proceedings. A number of states have adopted for their public employees the NLRB policy of deferring to contractual procedures, rather than conducting unfair labor practice proceeding, if it is likely that a dispute can be resolved fairly under a contract. In situations where a party refuses to participate in grievance proceedings, or a union breaches its duty of fair representation, direct court action may be permitted.

A refusal to process a grievance or to participate in arbitration proceedings may be an unfair labor practice remediable by the state labor relations agency. A union's breach of its duty of fair representation may be an unfair labor practice.

## Conclusion

In this chapter, an attempt has been made to give the reader an inkling of the legal aspects confronting today's school administrator who is about to become involved in negotiations. However, the sections in this chapter begin to explore the legal aspects in negotiating. Books have been written covering each topic discussed in this chapter. Many other topics could be added if space allowed, such as union security, unfair labor practices, specific contract clauses, mediation, arbitration, strikes, picketing, enforcement rules and the effect court decisions have on negotiating process. The list could go on and on and the laws and regulation to expand each topic are endless. Every practice, contract or proposal that is written today will have meaning in establishing a legal set of guidelines to follow in managing a school district. Negotiations are no longer confined to a few states, and this can be readily identified by reading such periodicals as Educators' Negotiating Service, Employee Relations in Action, Central School Law Digest, your own local Chief Spokesman, or by subscribing to the many chapters of the NOLPE.

Employees all over are exercising their rights through the legislative process and the various tribunals and courts. However, there will be instances where the law will continually change as new decisions are handed down and administrative rules are written to establish guidelines.

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## Chapter 2

# THE ROLE OF MANAGEMENT IN PREPARING FOR SCHOOL DISTRICT NEGOTIATIONS*

By Dr. Lewis T. Kohler, RSBA and Dr. Frederick W. Hill, RSBO, RSBA

### HIGHLIGHTS FOR EDUCATION MANAGEMENT IN THE NEGOTIATIONS PROCESS

- During the Union Organizing Campaign
  - Management Activity
  - Unfair Labor Practices
- Responding to Petition for Election and Bargaining Unit
- Operating Under Exclusive Unit Recognition
- Scope of Bargaining
- Defining Role of First Level Supervisor on the Management Team
- Preparing for Negotiations
- Engaging in Negotiations
- Work Stoppage and Strike Prevention
- Dealing with Special Interest Groups
- Dealing with Aftermath of Work Stoppages and Strikes
- Understanding of the Total Impact of the Negotiations Process

As public employee unions came into existence, many hours of teaching were given to the new employee negotiations. Such was not the case with the public employer. Because of time, financial and training limitations, public employers did not initially prepare their management teams to deal with formal negotiations.

This chapter presents a review of the steps that management personnel should implement in preparing for negotiations. Composition of the negotiations team, roles of principals and the role of the chief negotiator are some of the items discussed. A checklist is included for reviewing past agreements and data sources that should be reviewed prior to actual negotiations.

The theme throughout the chapter is that a unified management team must work together to effectively analyze any contract proposal and to develop good counterproposals.

Effective management-labor negotiations in school districts are dependent upon the quality of preparation prior to actual negotiation sessions. Adequate, constructive preparation cannot begin a few weeks prior to formal negotiations. Instead, an ongoing, systematic effort for preparation must be established long in advance of negotiations. This effort is the responsibility of both the line (superintendents, principals, and supervisors) and managerial staff at all levels of a local educational agency. The most skillful negotiator is of little value to a school district without skillful preparation of adequate back-up data by the school staff.

Some important and necessary procedures in preparing to negotiate include:

1) Study present contract, terms, existing personnel policies, administrative regulations, prevailing work practices, and established job specification thoroughly. Each of these must be carefully studied to identify those concerns and items which are causing problems at district or site levels, or creating difficulties in any part of the system. Both sides will regard all aspects of the "status quo" as the benchwork or foundation to which all newly negotiated conditions will apply.

2) Inspect and analyze closely grievances, informal complaints, tacit operational changes, letters of interpretation, fact finding decisions, arbitration decisions and any operational deviations which have been practiced in order to discover troublesome contract language, or situations which are creating problems in administration of a contract or in management/administration employee relationships.

3) Confer and discuss regularly with supervisors, principals and other line officers to improve their knowledge or contract administration and obtain information on how a contract is actually working. Middle manangement must be given opportunities for input if any contract agreements are to be effectively administered at the working-unit level.

4) Study carefully the records or minutes of formal or informal meetings or sessions between management and employee groups to ascertain or

project possible or probable requests for changes or demands which may arise in forthcoming negotiations.

It is a truism that where management is alert to ongoing personnel concerns, it is rarely surprised by unanticipated demands for basic contract changes. No one can anticipate all minor whimsical or "laundry list" types of bargaining demands, but an alert management usually can accurately forecast the major bargaining issues by doing its homework regularly.

5) Scrutinize the minutes, correspondence, statements, complaints and suggestions made by members of the policy-setting board of education both as official actions of the board as a whole, or by its officers, and even by individual board members or board candidates, or by vocal or effective community leaders.

The wise school administrator will keep informed and be mindful of community concerns and attitudes toward existing contract terms and conditions. He knows that a negative community or board attitude on such matters can be very destructive to the entire educational enterprise. Wherever such detrimental aspects of contract concepts exist, the management team should strive to eliminate them. Hence, an ongoing record of these items should be carefully compiled.

Most frequently, parents and the general public are especially concerned about contract terms dealing with school hours, teacher visiting, parent-teacher conference times, vacation and holiday schedules, grade reporting practices, sick leave and substitute practices.

In some areas, school closing, snow days and special ethnic, racial or religious holidays are particular items that bring public pressure and concern which school administrators can ignore only at great peril to their continuity in office.

6) Reivew current union agreements signed by other governmental entities/units to provide comparisons and analyses of significant deviations in local practices. Sometimes local differences are completely justifiable. Often they are not.

7) Review and study of reports from reporting on settlements of collective bargaining contracts to keep abreast of current developments that may affect school district contract negotiations.

More and more school districts belong to local area or regional networks. These data processing information sources can provide constantly updated information and summary reports on salary schedules, fringe benefits, working conditions and typical contract provisions.

An important tool and some basic sources of accurate negotiations information reports are, state associations of school administrators, school business officials and school board members. Therefore, management should establish effective operating procedures and fixed responsibilities for systematically accumulating, compiling, evaluating and interpreting such information.

Management needs to know not only what is happening, but what this means for its own district's negotiations.

## The Education Management Negotiating Team

It is important that education management, as soon as possible, decide who will represent the district at the bargaining table. Ideally, the number of members on a team will not be unwieldy but will provide for representation of management operations and staff members having management-labor relations and personnel expertise and experience. In larger educational agencies, a bargaining preparation team should be established to seek, gather, and coordinate resource information and data necessary for school district negotiations. Management may select and appoint its negotiations team members, who in turn will be expected to consult other members of the bargaining preparation team for assistance during actual negotiations periods. Recommended representation on the administration/management team should include personnel such as principals (management representation from the line operation side), the superintendent or his representative, representative staff members from the personnel division or department, the business administrator and labor relations and management representation concerned with specific aspects of a school district's operations which are currently being negotiated. The constitution of such a team ensures that school district negotiations are realistic from both line and staff operational standpoints and that they are more likely to be in conformity with optimum practices in collective bargaining.

## The Role of Principals and Other First-Level Managers

The question is often asked whether principals (or other first-level site managers) should be included as part of a district's negotiating team. There are distinct advantages that accrue from having principals on the negotiating team:

1) Teachers and other employees on the union negotiating team are more factual when a principal is present to correct exaggerated and inaccurate statements of prevailing practices in buildings, departments or other schools.

2) Principals have an intimate knowledge of specific teaching and other working conditions and can contribute greatly to the negotiations sessions.

3) The status of principals as an important part of a district's management team is increased/enhanced by including them on the District Management/Administration Negotiating Team.

4) Representative principals can quickly transmit to and inform other members of a district's negotiating team about the morale, disposition and expectations of teachers and other employees.

5) Including principals being on a district's negotiating team serves as a unique educational experience in management-labor relations and is especially valuable in the development of a district's future top-level administrators and managers.

6) Principals who have served as members of a district negotiating team will help interpret a contract to other principals and supervisors, and often can offset unwarranted criticism by "setting the record straight" with carping, critical colleagues!

## The District's Chief Negotiator

The individual who chairs the management negotiating team and who leads and directs the bargaining preparation must have both professional and personal attributes and characteristics that contribute to the negotiation process.

This individual must have a thorough knowledge of the negotiations process and possess skill in its use, including the "give and take" of bargaining collectively. The chief negotiator must be well-versed in bargaining tactics and techniques and the actual operation of a school district and its educational activities. The individual must understand the pressure on union negotiations team members and the effect these varied pressures have upon actual negotiations. Equally important is the fact that a district's chief negotiator must speak with full and complete authority within the bargaining paradigm established by the governing board of trustees and top district administrators. The top district administrators must have full respect for the chief negotiator's judgment and management-labor relations expertise. They must fully understand the substantial amount of time that the chief negotiator and other members of a district's negotiations team must have to effectively prepare for and conduct school negotiations. The chief district negotiator should be frank with the governing board of trustees and top district administrators about any district position which he considers undesirable, untenable or against the school district's best interest. The chief negotiator must have full authority over the district's negotiations team. However, this does not mean that he shall exercise full control over what is said and done, before, during, and after each bargaining session. Nor does it indicate that he shall designate the degree, time and manner by which alternative spokesmen may make presentations.

Unfortunately, it must be pointed out that some negotiators, and especially some with legal backgrounds, become so engrossed with legalistic minutia and secondary detail, that they sometimes fail to see the big picture or the importance of continuing harmony in educational operations. Their track records sometimes consist of continual confrontation tactics, long drawn out and bitter bargaining, impasse and fact-finding, injunctions, legal battles and excessive legal costs. Such negotiators have little respect for contract and budget deadlines and sometimes enrich themselves with legal fees exceeding the cost of reasonable settlement compromises. Usually, after a few years, community and

# EDUCATION MANAGEMENT - FIRST LEVEL SUPERVISORY RELATIONS

**MANDATE:** Improve Education Managerial Effectiveness

**STRATEGY:** Build a Strong Education Management Team Which Includes First Level Supervisors Who Will Have Positive Roles and Functions by:

PROMOTING AND STRENGTHENING BONDS BETWEEN TOP DISTRICT MANAGERS AND FIRST LEVEL SUPERVISORS

DEVELOPING EFFECTIVE COMMUNICATION SYSTEMS WHICH:

* Reach each first level supervisor
* Reach each first level supervisor in the District
* Make him aware that he is part of the education management team
* Provide for consulting with first level supervisors early in the decision-making process on district goals and activities as well as personnel policies and procedures
* Assure that first level supervisors are not the last to learn of top district administrative decisions
* Permit and encourage first level supervisors to candidly express their personal and professional views
* Enable individual first level supervisors to participate even if not a member of a supervisory bargaining unit
* Are not a carbon copy of the negotiations relationships

staff reaction to the educational results of such tactics cause the election of new board members and the discharge of the negotiator. This frequently leaves a new administration to pick up the pieces.

Therefore, before any outside negotiator is employed, administration and board members are strongly advised to examine the prior performance and operations history of districts where a particular negotiator has produced other contracts. Chances are that the negotiator's operational procedures will not vary greatly from district to district, unless management emphatically directs otherwise. However, rather than dictate how a negotiator should perform his professional services, it is better to find one whose methods and results are of the type desired, and then leave the tactics to the negotiator's professional judgment.

## Importance of Need for Consensus

It is of utmost importance that a district's management team perform as a cohesive unit, especially during actual bargaining sessions. Differences of opinion and personality conflicts must not be in evidence at the negotiations table. Members of a district's team must be completely briefed on the "Tactics, Rules and Techniques of Collective Bargaining". Team members must fully understand that only the district's chief negotiator has the ultimate authority to act as spokesman. The chief negotiator is the only one with the power to commit district management within limits previously agreed upon. The negotiations team members must understand that, while bargaining sessions are in progress, their opinions, thoughts and comments should be made only when called upon by the chief negotiator. In other words, the chief negotiator must manage each bargaining session. However, all members of a district's negotiating team must feel that district bargaining is a team effort. Each member must be an essential part of the team so that a constructive management-labor relationship will result. Although differences of opinion may occur among district negotiations team members, these differences must be ironed out, managed and controlled in a manner not to hinder district administration at bargaining sessions.

The selection and training of a district's chief negotiator with all optimum and requisite qualities and abilities require lead time and thorough planning. Selection and orientation of other team members and briefing them on their conduct at the negotiating sessions also required planning, forethought and thoughtfulness. Whenever a team member consistently violates agreed upon rules and procedures, he should be firmly disciplined or unilaterally removed or replaced. Finally, district management needs to develop a personality profile on each member of the union's bargaining team. These profiles can provide insight on union desires and priorities, and may also suggest tactics for establishing an agreeable "negotiating climate" with such individuals and their fellow team members.

## Evaluation of Previous Contract Agreements

As part of a district's continuous preparation for negotiations, a formal study and audit of each provision of the present contract should be made by district administration. This should be done throughout the effective period of the contract, through such means as the ongoing and regular analysis of grievances and through information supplied by principals and others as referred to in the initial discussion on suggestions for preparation to negotiators. Weak and faulty clauses should be identified; statistics and case histories compiled to adequately support any desired amendments, changes and deletions. The following checklist may be used as a guide for such an audit:

1) Have grievances filed during the contract year been studied, audited, codified and analyzed?

2) Does this grievance analysis indicate the number of grievances alleging violation of particular clauses of the contract?

3) Does the grievance analysis show the number of grievances settled at each step of the grievance procedure?

4) Have the type and number of grievances from each school, area, department and division been classified?

5) Does the grievance analysis present the cost to process and settle the grievances? Are the actual settlement actions catalogued and their subsequent interpretations agreed upon?

6) Does arbitration experience or grievance settlement show the exact change that an arbitrator's decision made in the intent of the contract?

7) Have arbitration decisions been analyzed to actually determine what changes and amendments are required in the present contract?

8) Has there been an analysis of education and work time lost and costs of union representatives acting on union business on school district time? Has the same been done for management representatives?

9) Are all facts available concerning slowdowns, sick-ins or work stoppages, if any, since the last negotiations were conducted?

10) Have all charges of contract violations by the school district or union been fully examined and documented?

11) Have the impact of any "sleepers" and "restrictive" clauses been evaluated for the intent of possibly eliminating them from the new contract?

12) Have all consultative meetings and discussions, since the previous year's negotiations sessions with the union bargaining committee been reviewed and analyzed?

13) Have written reports submitted by all levels of management on oral discussion sessions with union representatives regarding the interpretation of contract clauses and provisions been reviewed?

14) Have reports of principals and all supervisory meetings on contract and personnel practices been reviewed and analyzed for suggestions and advice on changes to be included in the new contract?

15) Are all levels of administration, management and supervision required to report all difficulties in function and operation under the existing contract and to suggest optional remedies?

16) Have the administrative, managerial and supervisory comments, reactions and suggestions been categorized and seriously considered in the light of the district's counterproposals?

17) Remember that nothing succeeds like success. Therefore, management should go out of its way to identify contract clauses and procedures which have worked well, or inured to the benefit of the educational program.

Good practices identified in this manner should be used as "prototypes" for developing similar actions in other aspects of the contract, and wherever possible, should be reinforced by concomitant desirable procedures which frequently can be of benefit to both sides.

Districts having the happiest labor relationships are those where both management and labor have learned the value of cooperative action leading to mutually satisfactory results. In negotiations, as in marriage, emphasis upon agreement rather than confrontation produces the best results.

## District Negotiations Data and Information

The accurate collection of all appropriate data and information is an important stage in the bargaining process. It accomplishes these objectives:

First, it provides the district negotiations team with resource information essential to effective negotiations.

Second, it assists district administration identify legitimate desires and perceived needs of employees and the union itself.

Third, it contributes to a mature problem-solving bilateral approach through reliance on actual facts rather than emotions or the attempted exercise and practice of new negotiations power, either real or imagined.

Fourth, it conditions the union to rely on actual and specific facts, not generalities.

Fifth, it provides management with resource information and data to defend and support the district's legitimate needs and desires.

Bargaining information from the following areas should be collected and analyzed:

Financial and Productivity Data - When public sector administration pleads inability to pay, a union can insist that a school district open its financial and budgetary records for review and evaluation. However, if public sector administration is unwilling to pay because it desires to spend the monies in other areas of concern, a union does not need to be given access to financial and budgetary documents.

In any event, under both federal and state Sunshine Laws or information acts, practically any information available to a public body on public matters cannot be withheld from most inquiries. Moreover, better agreements result when both sides agree on the essential underlying data. If the union demands more pay because of increased teacher and employee productivity, then any refusal by district management to acceed on the union demands must be substantiated by accurate and complete financial records. Basically, in contrast to private sector employers, public school district negotiators must be able to give all budgetary and financial data and resource information to adequately support the school district's position throughout the entire negotiation process. Because the taxpaying "public" is asserting a greater role for itself at the bargaining table, it is essential that information be factual and widely known.

Demographic Information - The composition of the teaching and work force (sex, age, race, educational level, certification, geographic origin) and recent or anticipated changes can sometimes have a major impact on the entire negotiations process. Therefore, accurate demographic data about all employees in a school district is of utmost importance at bargaining sessions. Care must be exercised however, to insure that any such data are not gathered or used in an illegal manner.

Salaries and Wages - In both private and public sector jurisdictions, negotiations often include a salary and wage rate increase as a major objective of the labor group, even though a school district has a master salary schedule. The union or labor group may use the salary and wage issue to put the district's administration on the defensive or may use the issue as justification for other demands. In order to to fully prepared and not be caught short, a district's administration should compile (and make available to members of the district's negotiating team) factual and complete salary and wage data for a period of at least one school year. This should include a summary trend data for at least five years.

Fringe Benefits - Fringe benefits have become as important or more, important than salaries and wages in many local, state and school district jurisdictions. As much statistical data and information as possible should be developed. This data should include not only the fringes the school district furnishes and pays for, but all other fringes paid in the geographic area and in neighboring school districts, other local and state governmental jurisdictions as well as in business and industry. In school districts, many fringe benefits are prescribed by the Education Code, or other statutes and regulations. Even though such fringes are prescribed, the methods and means of administering and implementing them probably is negotiable. Certain fringe benefits are fully negotiable in some local school districts and as such must be anticipated and costed.

Computing fringe benefits in terms of total and per hour costs actually worked is an effective means to compare overall trends and practices since the actual detains probably vary from area to area, school to school and/or unit to unit. In collecting this information, it is vital that costs be computed in all jurisdictions on the same basis, otherwise the comparisons become invalid.

Fringe benefits should always be considered at the same time as salaries and wages are being discussed at bargaining sessions. School district negotiators should never allow the fringe benefits to be separated from the salaries and wage discussion. They should be negotiated as one package and not as separate negotiable items. Otherwise, unions will negotiate the salary and wage issue and then start to negotiate fringe benefits. This can bring many school districts to the brank of disaster since costs of fringes are extremely high. Management should take the position that every item of cost is a part of the total pay plan, and employees should not be allowed to overlook or ignore the ongoing costs of previously established benefits.

## Evaluation of Past Negotiations Sessions

The district's negotiations team, in close consultation with other members of the district's management team, the governing board and the district bargaining committee (if one exists), must establish its negotiating strategy. The effectiveness this strategy at bargaining sessions can usually be made more efficient by an objective evaluation of how past bargaining was handled. Such as evaluation should take the following points into consideration:

1) If the initiative was taken away from the district's chief negotiator, have the reasons been examined and weakness in the strategy been corrected?

2) Have tactics in meeting unexpected demands at negotiating sessions been reviewed, analyzed and improved?

3) When, and if, the union negotiating team obtained concessions on key issues, have these been appraised and their impact itemized with past experience and noted?

4) If visual aids are to be used during negotiating sessions, how and when can they be effectively introduced?

5) Have sources been checked and adequate controls set up to insure accuracy, completeness and clarity if the accuracy of data, information or facts presented is challenged?

6) When past union negotiating demands conflicted with settlement of grievances, was the district's management prepared with actual examples to reveal inconsistencies on the part of the union, or to suggest acceptable alternatives?

7) Have union bargaining committee attitudes, techniques, procedures, strategy and flexibility been reviewed, analyzed, discussed and recorded for present and future reference?

8) When, and if, periodic bulletin information sheets are published and distributed throughout the district for teachers and other employees' information, did they really achieve their primary purpose of keeping them adequately informed concerning developments and progress?

9) Have plans been developed to improve the channels of communication for getting daily information to principals, other managers and supervisors, to dispel rumors and misquotations during negotiations?

10) Has an action program been planned, developed and implemented to assist union officials and representatives appreciate the mutual interests of the school district, taxpayers, students, administrators, managers, supervisors, teachers, other district employees and the economic facts of the case?

11) Has the impact of employee association or union publications on major goals or negotiation strategies, or the advent of outside labor representatives or state level or national level bargainers, been anticipated and prepared for?

12) Are contingency plans available for action in the event of token job actions, student and parent pressure, group interventions, living by the rule book, phone harassment campaigns, picketing administrator or board residences, and similar activities? Where agreed upon, and when courses of action are known to all members of the negotiating team, the chief negotiator can remain calm, cool and unflappable. When this becomes obvious, such tactics usually subside.

## Final Preparation Before Negotiations Begin

As soon as employee groups make their "demands" known and are consulted with about agreed upon negotiations procedures, the entire package should immediately be distributed widely to all levels of administration. This distribution should be followed by an analysis, background information and requests for specific comments. All members of the district's administration shall be required to respond with formal suggestions and comments. About this time, the district's negotiating team will meet with the union's negotiating team for clarification of union proposals. At this time, ground rules for the negotiations to follow should be explored and finalized. The reactions and results of the "clarification" meeting will again be provided to all members of the district's administration/management team for written suggestions, comments, reactions, recommendations and additional information. After this additional data is submitted and reviewed, the district's negotiating team will meet again with the negotiation preparation committee to finalize the district's position, strategy and proposed tactics.

The parties will then continue with serious negotiations at the bargaining table.

THE NEGOTIATIONS PROCESS

PROVIDES INTEGRATED PROCEDURES FOR RESOLUTION OF CONFLICT

1) Unorganized Stage
2) Organized Stage
3) Petition Stage
4) Election Stage
5) Certification and Recognition Stage
6) Preparation for Bilateral Negotiations Stage
7) Agreement Negotiations Stage
8) Agreement Administration Stage

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## Chapter 3

# INVOLVEMENT OF STAFF PERSONNEL IN PREPARING FOR NEGOTIATIONS

By Dr. Leland L. Foley and Dr. Dwayne C. Poll

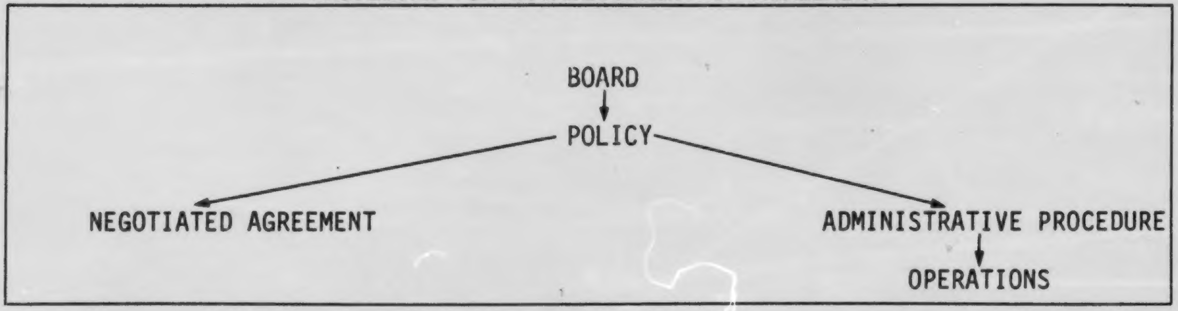
The bargaining process requires sophistication and skill. Regardless of the size of a school district or organization one must approach the collective bargaining task with seriousness, diligence and intense preparation. The bargaining team participant must prepare for the task with the complete understanding of all ramifications.

The district's organization will large control the preparation required by the Board of Trustees and the administrative staff.

Figure I demonstrates in four simple steps the procedure for the establishment of a negotiated agreement.

FIGURE I

PROCEDURE FOR ESTABLISHMENT OF AGREEMENT



The procedure for establishing an agreement from a school district's perspective includes these four considerations:

1) Board policy sets the direction for the functioning of the district.

2) Negotiated agreements must be within the boundaries of the policies and regulations of the Board and superintendent.

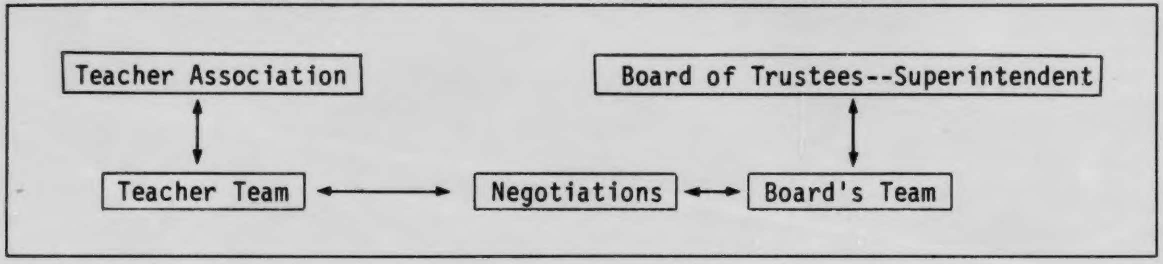
3) Negotiable agreements and administrative procedures related to the agreements are cooperative efforts of the Board and the administration.

4) The operational procedures of the district shall be established on the basis of ratified, negotiated agreements.

When a district begins organizing its administrative efforts in preparation for negotiations, specific responsibilities are assumed by different parties as shown in Figure II.

FIGURE II

ORGANIZATION FOR NEGOTIATIONS BY ADMINISTRATION



These responsibilities include, but are not limited to, the following parties:

Board -- The responsibilities assumed by the Board include: establishing district policies; making decisions on contract proposals; and ratifying and signing all agreements. All negotiated agreements must be in writing.

Superintendent -- The superintendent's primary responsibility is to advise the Board on all contractural matters.

Assistant Superintendents (for Curriculum, Personnel, Finance and other areas) -- The primary responsibility of these professionals is to advise the members of the administrative team on subjects directly related to their respective areas of day-to-day responsibilities.

Principals -- Their primary concern is to advise district negotiators on working relationships within their respective schools and within the district.

Consultants -- Any consultants to a district's team advises other team members regarding curriculum effected by negotiations.

The Board of Trustees must, at the outset of the negotiations process, accepts certain premises: The chief negotiator is the only spokesman for the Board and administration on matters under negotiation; negotiations must be within the framework of the law at all times; and all agreements must be reduced to written form with the right and responsibility for ratification assumed by the Board.

## The Chain of Command

In preparing for negotiations, a district must establish a clear, definite procedure with faithful adherence to prescribed channels. The Board of Trustees is at the top of this chain of command.

Within the framework of a workable chain of command some of the rights and responsibilities of the Board of Trustees are:

1) Establishes Board policy.

2) Develops district goals and procedures.

3) Selects the district negotiator.

4) Understands the purpose of unions pertaining to their attempts at bargaining.

5) Maintains control of contract management through the administration.

6) Responds maturely to pressures of unions and the general public.

7) Retains unanimity on positions established by the chief negotiator.

8) Acts as a group pertaining to negotiations.

9) Protects the confidentiality of negotiation strategies.

There are numerous factors obvious to the seasoned negotiator commending the chain of command as an approach which affords the greatest efficiency. Of prime importance is the degree of continuity in crucial areas where the management team must prevail if it is going to fulfill its responsibilities to the community. At the base of this chain are the teaching and nonprofessional staffs, progressing to the principals or other immediate supervisors, and ending, ultimately, with the Board of Trustees. An established chain of command does not provide any means to contact any level above prior to contact with the immediate supervisor.

Subordinate administrators and the professional and nonprofessional staffs possess no direct line to the Board. The superintendent is the channel through which the Board interacts with the administrators; the administrators are the Board's channel to the teachers.

## Board Policy

The Board establishes the organizational pattern that will be used for the negotiation process. The choice of who shall be the spokesman--an outside professional negotiator, the Board itself, the superintendent or district personnel--is a matter for the Board to decide. Whether the Board chooses a team or individual approach, its decision must be unanimous with full support and backing for its negotiating personnel.

## Selecting the Negotiator

When the Board selects a spokesman from within a district's administrative staff, whether or not the individual has any experience or background in negotiations, the chosen member must be afforded an opportunity to attend seminars and workshops to keep abreast of the ever-changing procedures in negotiations, laws and practices.

If an outside professional is chosen, the Board must take care to study the resume submitted for experience, expertise at the table, knowledge of Board policies and philosophy, as well as pertinent legal information and proven success at the bargaining table. Once selected, the professional negotiator must be provided with such basic information as historical perspective of the school district and local area; desires of the Board, administrative staff and teaching staff; and the outlook of the community itself.

The spokesman for the Board must have the full backing and confidence of the total group if he is to be successful at the negotiations table.

## The Board's Understanding of Unions

Board members must be prepared to deal with teachers' unions with full knowledge that collective bargaining has a leveling effect. Inherent in the purpose of collective bargaining is the equality of individuals within a group. If gains are made, all benefit.

One must recognize that collective bargaining requires skill and sophistication. It is a process which often brings out emotions on both sides of the bargaining table. Board members must maintain a high level of sophistication and professionalism to avoid this emotionality. Members must act as a group, supporting their selected negotiating team completely.

New board members often have a tendency to overreact and base decisions on emotions. It is unwise to think of teachers' unions as "your friendly staff" or as the "the enemy". At the bargaining table, however, Boards and unions may find themselves in direct opposition on particular issues. Boards must not sit in pre-negotiations sessions and establish clear-cut, inflexible parameters regarding these opposing issues. If negotiations are to be brought to a successful conclusion, compromises must be reached. How much compromise is necessary is dependent to a great degree on the skill of the selected negotiating team.

When negotiations are not brought to a successful conclusion, one may hear from Board members such phrases as: "How could they do this to us?" "We've been more than fair!" Board members should not blame themselves or their negotiator completely when a breakdown occurs. A breakdown can occur simply when the demands of the representing union cannot be met. Blame is not to be delivered; solutions are to be found.

Board members are to be cautioned against compromising every issue for the "best interest" of the teachers and consequently, the district. Salaries, job security, fringe benefits and class size are items that may be negotiated in some states, but it would be unwise to give away too many management rights. The day of reckoning will come when too much is compromised too soon and there will be nothing left to give.

Last, there is union propaganda. Unions have financial and manpower resources to devote to news releases praising teachers in their fight for the students. The public has been deluged with literature stating teacher viewpoints and needs. The communications ability of the unions far exceeds that of the administration.

## Superintendent

The superintendent should support the designated Board negotiator at all times and should attend all Board study sessions. The chief negotiator reports to the Board through the superintendent such items as:

1) Advisory comments.
2) Strategy.
3) Union demands.
4) Proposals and counterproposals.
5) Agreements reached.
6) Problem areas.
7) Consensus.

The superintendent is the one person who should be informed at all times on negotiations processes and progress. He is the direct agent of the Board. He supplies the Board with facts, statistics and other relevant data. The Superintendent participates actively in the development of Board policies. He will be placed in the position of fact-finder and mediator in developing perimeters if a stalemate or impasse develops.

By authority of his title, he is a member of the management team. If the relationship between the superintendent and the chief district negotiator is good then the negotiator has a staunch ally for resolving the detailed issues which will certainly arise during the negotiations process.

## Assistant Superintendents

Assistant superintendents act as advisory counselors when their specific areas of responsibility are being discussed at the negotiations table. This will aid in understanding the ramifications of an eventual settlement related to their areas of work. Only by understanding the negotiations process will they understand the results.

Each assistant superintendent should be available to the chief Board negotiator at all times and should attend negotiation seminars and workshops for self-improvement.

Assistant superintendents assigned to curriculum, personnel and finance will be directly affected by the end result of a negotiated agreement. They should, therefore, be involved in the decision-making process with an understanding of the functions of negotiations. They must comprehend the effects of proposals and counterproposals and why the negotiating team agrees to one item and not another.

## Principals

Principals are front-line management. As such they are involved in decision making. They know the contract agreement. They follow procedures. They enforce the negotiated agreement. They understand union tactics. And, they are part of the grievance procedure.

The principals on the negotiations team are responsible for making recommendations to the district's chief negotiator on the results of proposals, counterproposals and teacher requests pertaining to methods and procedures.

The role of the principals (not only those who sit at the table) has a direct effect on the successful outcome of a negotiated agreement. It should be recognized that enforcing any agreement rests primarily upon the principals' shoulders. They are the front-line proponents of management's rights on the rough stage of the day-to-day practice of supervising those under their jurisdiction. They must understand the negotiated agreement, its language and intent, and its grievance procedure.

Their role extends to reporting problems in administration of the present contract with recommendations for revisions. One approact is to have study sessions on changes made in the previous year's agreement and, in the early stages of negotiations, to give principals an opportunity to make recommendations on additional changes and deletions in the present agreement and on the union's proposals affecting next year's agreement.

Here again, principals should be given opportunities to attend seminars to increase their understanding of the negotiations process. To bring about understanding of all members of the administrative staff, there must be continuous communications with the Board, the superintendent, assistant superintendents and principals. Communications channels must be open at all times.

PREPARATION FOR NEGOTIATIONS: DISTRICT MANAGEMENT AND GOVERNING BOARD

## A CHECKLIST

1) What negotiation policies or guidelines are to be followed? What will be the rationale for negotiations?

2) What role will be played in the determination of what teacher organization will represent teachers? Will exclusive recognition be granted?

3) Will any effort be made to influence the determination of who will be represented in the negotiating unit? What happens to groups that may be omitted from the unit?

4) Who will do the negotiating? What roles will be assumed by the Superintendent, other administrators and board members? Will specialists be used (legal counsel, trained negotiators)?

5) What limitations, if any, will be placed on the scope of negotiations? How will they be decided? Is the scope of negotiation negotiable?

6) What financial and other kinds of data will be needed to begin negotiations? Are these data to be made available to the teacher team?

7) What negotiating strategies should be decided on before the opening session?

--Ontario School Trustees' Council

## Chapter 4

# EDUCATION MANAGEMENT AND THE UNION ORGANIZING CAMPAIGN*

By Dr. Lewis T. Kohler, RSBA

## Pre-Organizational Period

### Conduct of Education Management Prior to Union Organizing Campaign

Recent rapid growth and expansion of employee unions in public sector jurisdictions gives every indication that organizing activities of public employee unions will continue to expand and intensify. The percentage of public employees at federal, state and local levels joining, belonging to and represented by labor organizations exceeds that of private sector employees. It is imperative that education management should adhere to the following outline and take the procedural steps listed here prior to the start of a union organizing campaign.

I. Recognize the importance of education management-labor relations.

  A. Become as concerned with and expend a commensurate amount of planning, initiative, talent and energy on management-labor relations as that devoted to staff and line operation tasks.

II. Plan and organize for education management-labor relations

  A. Identify and activate the management team, including first line supervisors and site managers.

  B. Orient all team members to the management team concept and approach.

  C. Arrange to recruit and obtain staff of sufficient size, authority and expertise.

III. Plan, develop, adopt and issue a clear statement of management and Board policy and philosophy concerning management-labor relations. Define in writing principles to be observed in management's relations with unions, including:

  A. Commitments to the interest of the public.

B. Management's commitment to modern work and assignment practices.

C. Teachers', or other employees', and union's rights and responsibilities.

D. Management rights and responsibilities.

E. High standards of teachers' and other employees' performance.

F. Management's recognition of positive approach to third-party resolution of differences and disputes.

G. Enhanced well-being of teachers, and other employees, through maximum appropriate participation in matters concerning personnel policies, practices, and working conditions.

H. Importance of sound management-labor relations to accomplishment of school district-wide goals and objectives.

IV. Organize education management-labor relations activities to reflect integral involvement in personnel management, placing special emphasis on:

A. Top level executive and Board commitment to collective bargaining.

B. Bilateral nature of personnel management.

C. Total integration of education management relations responsibilities in personnel management.

V. Plan and develop a systematic approach for planning local educational agency training.

A. Identify district-wide management-labor relations training needs.

1. Define skills and knowledge required to perform various line and staff management-labor relations functions.

2. Inventory abilities possessed by present district personnel as a guide to the magnitude of training needs.

B. Determine means of meeting training needs.

1. Hire experienced personnel.

2. Train present personnel.

3. Redistribute experienced personnel as required.

4. Develop training cost estimates to accomplish management-labor training needs.

5. Train the education management team in the following areas:
    a. Education management-labor relations policy and philosophy.
    b. Labor history, structure, philosophy, objectives and methods at local, state and national levels.
    c. Teachers', other employees', and union's rights and responsibilities.
    d. Communications and human relations.
    e. Management rights and responsibilities.
    f. Process of collective bargaining.
    g. Appropriate skills of collective bargaining.

VI. Ensure adequate staff and line support of the collective bargaining process.

A. Provide personnel/management-labor relations directors direct access to the district superintendent of schools.

B. Delegate personnel/management-labor relations staff appropriate authority to deal with unions.

C. Assign appropriate responsibility in management-labor relations matters to line managers and school site managers.

D. Provide line management at all levels with management-labor relations staff support.

E. Utilize expert resources for guidance and assistance.

1. Association of School Business Officials' Staff Development Seminars.
2. American Association of School Administrators' National Academy for School Executives.
3. National School Board Association's Training Sessions and Programs.
4. Various states' labor relations boards.

VII. Review district personnel policies, regulations and procedures for:

A. Conformity to national laws and other regulations.

B. Conformity to state laws and other regulations.

C. Conformity to the state education code.

D. Possible sources of teachers' and other employees' dissatisfaction.

VIII. Plan and organize effective information dissemination and retrieval systems to include first-line managers and site administrators.

A. Keep the management-labor relations team informed.

B. Collect feedback on employee attitudes, needs and desires.

C. Collect necessary information and data.

D. Collect feedback on union attitudes.

IX. Collect information, maintain resource files and analyze information relating to management-labor relations such as:

A. Union organizing activities in the school district, other public sector jurisdictions and the private sector.

B. Agreements in the school district, other public sector jurisdictions and the private sector.

C. Decisions, reports and opinions by:

1. State and local regulatory bodies and agencies.
2. Arbitrators.
3. State conciliation services.
4. Courts.
5. Assistant Secretary, Department of Labor.
6. Federal Labor Relations Council.
7. American Arbitration Association.
8. National Labor Relations Board.
9. Federal Service Impasse Panel.
10. Professors.

## UNFAIR LABOR PRACTICES: DISTRICT MANAGEMENT

* To Encourage or Discourage Labor Organization Membership
* To Interfere with, Restrain, or Coerce Employees with Respect to Membership or Non-Membership in Labor Organization
* To Discriminate Because of Labor Organization's Member Filing an Unfair Labor Practice Complaint Against the District or District Administrator
* To Control or Sponsor a Labor Organization
* To Refuse to Recognize Labor Organization's Representative
* To Refuse to Negotiate in Good Faith

## UNFAIR LABOR PRACTICES: LABOR ORGANIZATION

* To Take Action Interfering with Employees' Work or Assignment
* To Engage in or Fail to Prevent or Stop Work Stoppage or Strike
* To Interfere with, Restrain, or Coerce Employees with Respect to Membership or Non-Membership in Labor Organization
* To Force District Management to Interfere
* To Discriminate in Representation of All Labor Organization Members Because of Sex, Race, Creed, Color, National Origin or Membership in Labor Organization
* To Refuse to Negotiate in Good Faith

## Response of Education Management to the Organizing Campaign

The "Education Management Team" has certain critical options available to it during the union organizing period. Assuming the procedures outlined earlier in this chapter for the pre-organization period have been planned, developed and established, education management will be able to:

1) Quickly ascertain that a concerted union organizing drive has begun.

2) Make sure that the entire management team is aware of the fact that a union organizing drive has begun.

3) Critically review teacher and other employees union rights and responsibilities with the management team.

4) Review management rights and responsibilities.

5) Review and evaluate roles and responsibilities of the management team.

6) Plan, develop and conduct additional briefings, orientation and training if required.

Specifically, education management should be prepared to respond to union tactics, actions and requests in the sound manner that reflects management's interests while at the same time conforms to the intent of local, state and national rules, regulations and decisions of regulatory boards and the courts. Education management should not abrogate its duty to manage.

The following guidelines present some of the important functions education management must perform during a union organizing drive. Education management must:

1) Inform teachers and other employees of their rights to form, join or assist a union or to refrain from doing so.

2) Treat all parties with "equivalent" status in an equal manner.

3) Prohibit union organizing activities during working hours and in work and teaching areas.

4) Prohibit the solicitation of new members or dues collections on district time.

5) Respond to requests for lists of names and information identifying a bargaining unit (title, position, grade and duty/teaching location).

6) Enforce work rules impartially and in accordance with customary past practices, irrespective of the teachers' and other employees' membership or activity in a union.

7) Reprimand for cause so long as such action follows customary past practice and is accomplished without regard to union membership or non-membership.

8) Assign work, extra assignment, overtime and supplemental paid assignments in a customary manner so long as it is done without regard to union membership or non-membership.

In addition, there are certain actions which education management should take during a union organizing campaign to establish and maintain a good management-labor relations climate throughout the school district. Education management should:

1) Identify the union or unions involved and their leaders for analysis by the management-labor relations team.

2) Keep detailed records of union literature, leaflets, promises and other materials and information.

3) Meet with the unions involved to establish ground rules governing campaign activities.

4) Establish specific ground rules for the conduct of the union organizing campaign--in the absence of an agreement of the parties.

5) Inform teachers and other employees of elections procedures and the importance of voting.

Certain actions are available to education management which may be accomplished. However, in the absence of unusual circumstances, education management should make sure that such actions are in the best interest of the school district. Education management may:

1) Permit the use of district facilities for meetings so long as they are held outside working hours and are subject to security and safety regulations.

2) Make space available in school district news publications to give notice of union meetings.

3) Make available office space to a union only under unusual circumstances, that is, when a work/teaching location is in a remote area.

4) Require that all union literature and notices be submitted for review and approval.

5) Provide space for posting and distribution of union literature.

6) Prohibit posting of union literature attacking the school district, local, state and national governments, or materials related to partisan political issues.

Certain activities and actions should not be accomplished by education management since they are grounds for a charge of unfair labor practices by the school district or may be grounds for setting aside an election. Management shall not:

1) Discriminate against any of the parties involved.

2) Make promises or threats designed to influence a teacher or other employee in the exercise of his rights to form, join or assist a union or to refrain from doing so.

3) Criticize, reprimand or discipline teachers and other employees for union membership and activities.

4) Discriminate in assignment of work, teaching load and so on, because of union membership or activities.

5) Enforce rules against union supporters which are not enforced against non-union supporters or which have not, as a matter or past practice, been enforced.

6) Question teachers and other employees about their union activity, membership or beliefs.

7) Conduct or manage in such a way which would indicate to teachers and other employees that they are being observed to determine whether they are active in union affairs.

8) Assign work and teaching assignments or transfer teachers and other employees so that those active in union affairs are separated from other staff members who seem interested in a union organization.

9) Urge staff members to try to persuade others to oppose a union.

10) Ask teachers and other employees how they plan to vote in a union determination election.

11) Prohibit teachers and other employees from union membership solicitation during their off-time on school district premises so long as the activity does not interfere with work or teaching being performed by others.

12) Make anti-union speeches or remarks to teachers and other employees.

13) Supply home addresses of teachers and other employees to union organizations or to teachers and employees opposed to the union.

14) Prohibit distribution of union literature in non-work/teaching areas during off-hours.

15) Prohibit wearing union insignia unless safety conditions exist.

16) Show partiality in providing facilities and services to any of the involved parties.

17) Refuse outside union organizers access to teachers and other employees on school sites and other school district premises if other means of communications are not available.

18) Prohibit anti-union activities by teachers and other employees, other than managerial employees, of the school district.

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## Chapter 5

# THE NEGOTIATIONS TABLE

By Dr. John J. Keough and Edward F. Gwiazdowski

Many people recall the international incident caused when American diplomats spent days negotiating with diplomats of another country over the shape of the table. Sometimes the procedures and pre-negotiations ritual require days before the substance of negotiations can be discussed by the two sides. For this reason, and others, it is important to pay careful attention to the procedures and the arrangement of the bargaining process and not casually dismiss process in favor of product. This chapter discusses form and process rather than content and product.

## Members at the Negotiating Table

As negotiations have evolved over the years in education, the table has changed from strictly a Board of Education setting policy and passing it on to teachers, through informal fireside chats with Board members, administrators and other teachers making an effort to give teachers input into policies that directly affect them, and finally to formal confrontations with Board and teacher groups, each having appointed representatives. Today, many groups, both Boards and teachers, hire trained, professional negotiators to meet across from each other at the bargaining table and hammer out contract adjustments.

The size of the negotiating team affects the composition of its membership. Some professional negotiators (such as labor attorneys) prefer one-man or two-man teams. The obvious advantage of the one-man negotiating tactic is the outside negotiator will be the only negotiator for the school district. His problems of team discipline are minimized to the extent that they don't even exist. If it is a two-man team, the chief negotiator only has to maintain discipline over one other team member.

There are disadvantages to the outside negotiator too. He does not know the district as well as administrators from the district; he does not even know the district as well as Board members. He may or may not be able to reach a quick agreement depending upon the amount of authority vested in him by the Board of Education and the central administration of the district. The single-member team also lacks for a witness to what has taken place with the other side. The single-member team, nevertheless, probably finds it easier to reach an agreement.

## Qualities Needed at the Negotiating Table

There must be a good selection of people on the bargaining team. Only qualified persons should be included. Political considerations should not be of concern. Integrity in Board members is absolutely essential.

Besides unquestioned integrity of character, other qualities are required in the key spokesman for the school district's team. Hopefully, however, these qualities exist in all members of the team: intelligence and the potential to benefit from the experience for future bargaining, good health (particularly the ability to spend long hours under high tension at the bargaining table), a sense of humor, a degree of stubborness without being too obstinate and good intent. It is most important that the key spokesman has had experience in negotiations and not be training at the table. For this reason it is desirable to have other members of the team in training or for backup in case the key spokesman takes ill or misses a bargaining session further down the line. Someone with practical experience in planning and developing policies should be on the team. Someone (usually a school business official) who is able to understand the budget and have a facility with numbers should be on the team, although that person need not be at all meetings.

Since the beginning of collective bargaining in the public sector, the question of whether a labor attorney is needed at the bargaining table has been debated. Many labor attorneys were bargaining in the private sector prior to the advent of collective negotiations and applied this knowledge to the work that they are now doing extensively in the public sector.

Individuals of good intention should be able to write a contract. "Legalese" is not needed. A lawyer is not needed to write a contract; but a school administrator experienced in collective bargaining is needed. Although it is not necessary to have an attorney perform the bargaining, a qualified labor attorney should be retained on a consultative basis.

## Meeting Place

The negotiating place has varied in the early stages of collective negotiations. Meeting places have ranged from a superintendent's office, teacher lounges, classrooms, backyards, parking lots, telephone booths, teacher, administrator or Board member's home, bar rooms, and gymnasiums to TV studios and court rooms.

The place of the negotiating sessions is a joint decision made by the employer's team and the representatives of the employees. Generally, school facilities are used. However, there are times when it might be advisable to meet away from school grounds. This is usually at the instigation of the employee bargaining group. For example, if negotiations are at impasse and a strike is threatened, the employee group may refuse to meet on school grounds. Generally, meeting on school grounds places an employee group at a psychological disadvantage since it is on the school dustrict's turf. The quickest and easiest way to determine a meeting place is to let the two chief spokesman decide where to meet.

There are also advantages and disadvantages to going to the opponents' requested meeting place. For instance, information can be withheld by simply not having it available, or one group may want to stay longer than it is welcome in an effort to force an issue. In most instances, an opponent would not be willing to walk out of a meeting in his facility. Many times, when faced with negotiating in the opponent's office, a district team takes on a different role and the burden of preparation rests on the teachers' side. The union team is forced to carry the burden of the negotiating strategy and lead the way toward settlement by a continuous effort to keep things going. This could be especially true if someone in higher management is sitting in or could unexpectedly sit in to observe the progress.

The typical negotiating table arrangement is generally rectangular, depending on how many members participate, with the two teams positioning themselves across from each other. If sufficient seating is not available around the table, a "summit conference" arrangement may be used with team members positioning themselves in rows behind the main negotiators. This arrangement tends to be more formal, but may be preferred in an effort to bring to the forefront those persons who will do the negotiating and decision-making for the team.

Many other types of arrangements have been used in negotiations ranging from groups sitting around a room, to sitting in a circle, to chief negotiators sitting side by side, to teams sitting in opposite rooms with a third party moving back and forth between the rooms carrying proposals and counterproposals. The deciding factors will be based on the intensity of the negotiations and how the arrangements fit into the objectives, strategies and relationships between counterparts.

A meeting room and two caucus rooms are necessary. If three rooms are not available, two can suffice. Two rooms are a little more awkward when one of the two bargaining sides has to get up and leave the room taking along all confidential papers, for caucuses. Using the Board of Education public meeting room may at times lead to some psychological difficulties, especially where the opponents take the seating arrangement of the Board. They sometimes begin to subconsciously identify with the board's legislative or policy-making authority.

The physical accommodations are important. Consideration must be given to the heating, lighting, ventilation, table shape and size, chairs to seat all parties, water and glasses, easy accessibility of rest rooms, soft drinks and coffee. The importance of these latter items will be seen the first time the employee group purposely extends the length of a meeting, having planned ahead to bring its own coffee and refreshments when none have been provided in the negotiating room. This type of tactic does place the employer group at a disadvantage; as the bargaining sessions go late, team members are tired, hungry and uncomfortable. Under these conditions, concessions are more readily granted.

The number of kinds of people that may or may not compose a negotiating team at the table depends on the importance of the negotiations, the difficulty involved, the time available, the size of the organization, the number of employee groups and the number of classifications for employee groups covered under one unit. Regardless of the number of members, it is of utmost importance that teams be able to see and hear each other clearly. With practice and experience, team members should be able to observe the unspoken reactions, comments, gestures, signs of concern and agreement of the opponent. A seating arrangement might even be developed with specific assignments to the team to watch and record reactions to various comments being made by the chief negotiators.

It should be clear from the beginning specifically who makes up the team so that the numbers stay relatively consistent and the membership does not change to the point that items have to repeatedly be discussed to bring new or changing members up-to-date. Too much change hinders progress. Formulas may have to be developed or officer positions designed in an effort to define the numbers at any given meeting.

The number of outside consultants to be used should also be defined, with each negotiating team notified in advance that the other desires the presence of a consultant at a particular meeting. The identity of the person and the purpose for his presence and any special facility or equipment needed should be designated in advance.

Agreement must also be reached prior to actual negotiating sessions as to who the chairperson will be or who will co-chair the meetings. These persons should take pre-determined positions at the table.

Other important ground rules will be discussed and decided upon prior to negotiating sessions. These rules include: methods for selecting the meeting place; length of each meeting; method of taking minutes by the respective teams; use of recording devices; and cancellation of meetings. Hopefully, these ground rules can be mutually agreed upon in an effort to bring continuity to what happens at the table. Perhaps most important is to see that negotiating tables are not a source of conflict or problems, but a source to facilitate agreement and final settlement. The days of "I don't care, do it anywhere you can," are gone. Negotiating is not a game, but a science of give and take, requiring a tremendous amount of planning and foresight starting with the arrangement of the negotiating table.

## Time of Meetings

The time as well as the place of meetings is an item to be mutually agreed upon by both negotiating parties. Generally, negotiations are held on a weekday evening and usually are scheduled on a regular night, depending upon the schedule of the negotiators involved. Negotiations can also be conducted in the afternoon, on a Saturday, or, in fact, any time. Scheduling negotiations for an afternoon usually requires releasing some members of the employee bargaining team from work early and in the case of teachers, obtaining substitutes. Meetings on Saturday most often are scheduled when a critical point in the bargaining process is reached and either full agreement or a major forward step is anticipated.

The scheduling of meetings and the use of this time is most important. Time is money--whether a school district uses its own administrative staff as the key spokesman or employs outside negotiators. Administrative staff time is a resource. If administrators are not negotiating, they will be using their time for other district purposes. Most hired negotiators tie time into their fee arrangement with the school district. This is particularly true with labor attorneys; they charge by the hour. Recognize that on the one hand, by spending more time to reach a good contract, thousands of dollars can be saved; or on the other hand, by spending more time, administrative time can be wasted and the dollars spent on negotiator's fees unnecessarily.

## Opening Gambits

The process of negotiations usually begins with a notification by the employee union that it is ready to begin bargaining a new contract. This notification normally goes to the superintendent or his designee and then to the Board. Long before this opening gambit, the district should have reviewed the existing contract, prepared proposals, established its position and agreed to general guidelines for what is being sought and what the district is willing to trade with the employee union.

The second move consists of meeting to exchange packages. This can be an informal exchange of packages between chief spokesmen. Other times a bargaining session is arranged for the exchange of packages or written materials are exchanged and no actual bargaining takes place at that particular meeting.

The very first thing to establish is the ground rules. What methods will be used to conduct the meetings and when will meetings be held. This is most important to negate later dispute over ground rules.

## Ground Rules

The importance of ground rules is illustrated in a booklet by the Americal Association of School Administrators entitled "Critical Incidents in Negotiation". Following is an excerpt from that booklet:

MANAGEMENT TEAM ! EMPLOYEE TEAM *

CHR: !

> You know, John, I have been looking at the ground rules you revised for us, and I find your revisions acceptable for the most part. However, I am sure you understand that we are negotiating and that we don't want to negotiate out in the public, as I think you are proposing.

CHR: *

> I am sorry that you regret........

CHR: !

> I am not through yet, John.

CHR: *

Well, you have already made your point. The point is, you want to muzzle us. You want to gag us. You don't want to let us communicate with our members.

CHR: !

I am not sure you can call it a "gag", because we are just as interested in putting out the truth as you are. But a unilateral press release cannot necessarily be called the truth all the time.

CHR: *

We have tried to communicate with our members. We have a vast audience anxious to know what is going on between our team and yours. The only really effective way to communicate on an instantaneous basis is the newspaper.

If you are going to characterize our press releases as not being the truth, that's for you to say. I'll tell you that we'll call them as we see them.

For crying out loud--there have been a lot of wars fought for the freedom of speech and the right to review actions of the government. You happen to be a government agency, and we want to have the government in the sunshine. We are not allowing any "gag rule" that will prevent us from communicating with our members and telling them how we feel about a certain set of circumstances.

MBR: *

Not only that. I think the local newspaper has just come out with a thing that they really could take us to task..........

CHR: !

I know you two gentlemen have the same name. Is he talking for you?

CHR: *

At times John is authorized to speak for the teachers, yes.

CHR: !

It's all right, then, if Bob and Leon talk about his, too?

CHR: *

If they have anything worthwhile to contribute occasionally, I'd be glad to hear from them.

CHR: !

I'd like to go back to the freedom of speech issue. I'm just a little bit upset by the innuendo that we are not in favor of it. We want just as much sunshine in the operation as you do. But if we have to come back to the next meeting all burned up because you have sliced the bacon just a little differently than we have been discussing and we issue a controversial press release different from yours, it would seem to me that we cannot come to agreement.

You know we have gotten through this ground rule structure with a great deal of acceptance by both sides. I'm pleased with what you have accepted of ours. I just can't understand why you have to say that you're going to go out and attempt to get a ground swell of public noise. This will cause the Board of Education and superintendent to come screaming in saying, "What are you guys doing?"

CHR: *

But you're the one who is insisting on ground rules. All I'm insisting on is that the ground rules be equitable. You've got the public relations firm that works for the school district. We can only depend upon free coverage by the press.

Almost 70 percent of the local tax dollar is going into the operation. Consequently, the people and the teachers have the right to know where we are in the discussions, what we're discussing, and general agreements we have reached.

I would propose that we have no ground rules, if arguing over ground rules is going to prevent us from reaching an agreement.

CHR: !

I can't agree with that. I think that having no ground rules would just be sticking us right out in front of everybody and giving us clubs. We'll beat each other on the head.

CHR: *

The more rules there are the more things people can be accused of.

CHR: !

We don't have many rules.

CHR: *

We only need one rule and that's when we'll meet next. That's about the only rule I've ever needed to reach an agreement with people who are reasonable.

This example indicates the type of exchange that often takes place during the bargaining process. The tone of the exchange hints at more trouble if there are no ground rules established.

A list of ground rules that have been used and are acceptable for negotiations are as follows:

1) The parties shall be entitled to obtain from each other all public information necessary to the conduct of negotiations.
2) Meetings will be held at a mutually agreeable time and place.
3) Meetings shall be scheduled for a minimum of two hours.
4) Impasse will not be declared until all items have been discussed.
5) All agreed upon items shall be signed at the following meeting subject to inclusion in the final agreement. Tentative agreements will be prepared at meetings in understandable form.
6) Each party shall have an unlimited right to caucus.
7) No meetings shall be canceled except for illness with at least eight hours notification.
8) Every effort shall be made by the district and the association to reach an equitable agreement by an agree upon date.
9) Both sides shall be empowered to reach an agreement.
10) There shall be no press releases until either a point of impasse or an agreement is reached.

An expansion or deletion of any of these rules depends upon the uniqueness of a particular bargaining situation.

## Opening Statements

Besides having a list of ground rules ready to present to the union, management should be prepared with an opening statement to use if it is absolutely necessary. Management listens and only seeks clarification of demands at this time. If at all possible, lengthy speech-making should be avoided.

Many unions make no opening statement, but some make speeches. If a speech is made, don't ignore it. Don't respond in an inflamatory manner if the union's speech is emotional and inflamatory. A reasonable response is along the lines that the district agrees that there are problems, yet is here to work on these problems; the district cannot work on these problems on the spot. It will take awhile to work through them. The speech or response cannot be written on the spot. It should be prepared in advance by the chief district spokesman; it should be natural to him and comfortable for him to make extemporaneously. It should not be read. Don't start off on the wrong type of statement. A mature negotiating relationship avoids soapboxing.

## Your Team at the Table

Team discipline is most important. Any member who cannot control himself should not be on the team. Only one person is the spokesman.

Team members should use notes to request a caucus if they believe they have valuable inputs to be made by the chief spokesman. There is rarely reason for two persons to be spokesmen. On occasion, the team leader might call upon another person (for example, the business official) to explain a money package or a particular fringe benefit. However, even this is best done in the caucus room unless the matter is highly technical and difficult for the chief spokesman to comprehend or put across.

The caucus can be both an offensive and defensive tactic. If a district is on the defensive, a caucus should be called in a casual manner. Don't overemphasize calling a caucus because it has a psychological effect. As a defensive weapon, if a district is ready to concede on a point, it should have a caucus first to make it appear that it is hard to get this concession. The union's position should be evaluated at ever caucus.

The confidential nature of the bargaining discussion must be maintained. No one on the Board team should tell anybody about union offers, concessions or proposals. Leaks can have disastrous results and can build a climate of distrust. There is tremendous pressure on union negotiators and almost always tremendous distrust among their members. The presence of a large union team at the table is indicative of this distrust. The union is not bringing in numbers to frighten the Board; it is bringing in the large numbers because members don't trust each other.

The Board team should designate someone for note taking, a person whose primary responsibility is to write like the blazes. Those notes will be useful if the bargaining goes to mediation and fact finding. The note taker should not be the chief negotiator. If the chief Board spokesman writes what his opponent member says, he is giving substance to the speech. Generally, the chief negotiator doesn't have time to do much except continue to look and listen to the opposite speaker. Tape recorders should not be used. There is no sense negotiating in a goldfish bowl. The note taker should also take notes about union concessions, what is said, and how members at the union team act when they do it. These notes should be typed for future record. Union history shows that unions get things through persistence. If something is knocked out this year, a district will likely see it again next year. Therefore, remember what it was that was thrown out this year.

## Board Members on the Team

The question of whether or not to have Board members on the bargaining team or not is still being debated. Some districts never use Board members on the team. However, many districts and boards themselves still persist in wanting to have Board members as part of the team. The New York State School Boards' Association, and for that matter, the New York State Public Employment Relation Board, views the superintendent as being responsible for bringing a contract to the Board. The Board ratifies the contract. The superintendent is responsible for obtaining a contract that is satisfactory to the Board, the Board then accepts or rejects what the superintendent brings to it.

In a competitive situation as collective bargaining, it would seem that a school district should go in on terms equal in strength, at least, to the teacher or non-teacher union. When Board members are part of the team, the Board team gives away one of its advantages by having some ratifiers already committing at the table. When the entire Board sits at the negotiating table there is no group at all to bring the contract to for ratification. The union's team has to bring the contract back to the entire union for ratification. And there have been instances where the union membership has rejected a contract that its bargaining team negotiated. School boards should have the same opportunity.

On the other side of the coin, the argument is put forth that having school board members on the team keeps the communication lines open between the entire Board and the bargaining team. Unless a school board has internal conflicts among members, individual members will almost always support the team because of the presence of Board members. Of course, if the school board has confidence in its administration and its chief negotiator, hired or otherwise, it will not require having some Board member sitting on the bargaining team to give it support.

The following list comments on some views toward the advantages and disadvantages of board members as negotiating team members.

VIEWS OF A BOARD MEMBER WHERE THE ENTIRE BOARD IS THE NEGOTIATING TEAM

1) The whole Board has a complete understanding of demands.

2) The position presented by the Board is official.

3) The Board can take the brunt of slings and arrows and the administrators are not tainted by heated exchanges.

4) The number of meetings the Board must attend is probably reduced by this technique.

5) The Board feels an obligation to meet, confer and discuss with its employees as well as the citizens.

6) The Board has a better chance to keep the situation under control than through a third party.

7) The Board is strong in its feelings that all negotiations be done in a public forum. The more public in attendence, the better. Public money is involved.

8) Over the years Board members have learned a great deal through this process--as long as it works, it should probably be used. When it doesn't, it should be changed.

## VIEWS OF A DISTRICT SUPERINTENDENT WHERE THE BOARD IS INVOLVED AS THE NEGOTIATING TEAM

### Advantages

1) The Board of Education is responsible to the electorate for the operation of the schools, and therefore, must know that they must live with agreements.

2) Boards should know what patrons want in a school system and should be familiar with the conditions that exist in a community.

### Disadvantages

1) A great deal of time is required to attend sessions.

2) Personalities may become involved.

3) Emotionalism may surface; an outside party may be able to view facts more clearly.

## VIEWS OF A REPRESENTATIVE OF A NATIONAL PROFESSIONAL EDUCATIONAL ADMINISTRATION ORGANIZATION

### Advantages of Having a Professional Negotiator

1) If the Board of Education hires a professional negotiator, it can put limits as to how far it will go enabling him to negotiate accordingly.

2) The Board can give the hired negotiator the authority to settle certain issues.

3) Board members do not have to spend the hours involved at the negotiating table taking time away from daily vocations.

4) Teachers hire professional negotiators so it is, perhaps, wise for the school board to do likewise.

5) Teachers quite frequently will demand twice as much as they are willing to settle for, therefore, a professional negotiator can more readily weed these out.

### Disadvantages of Board of Education as Part of the Negotiating Team

1) It is difficult for six people to negotiate (or the number of members on the particular board).

2) Generally speaking, no board member has expertise in professional negotiating.

3) With the school board acting as a negotiating team, this could cause strain among the Board.

## VIEWS FROM THE TEACHERS' SIDE OF THE NEGOTIATING TABLE

### Advantages of Negotiating Directly with the Board

1) It enables both sides to have personal contact to get to know each other as personalities.

2) By bringing a personal contact from the teachers' team to the teachers, any contract terms will be more acceptable to the teachers.

3) It allows teachers to have a better understanding of the workings of the school board and knowledge of district affairs and problems.

4) It provides for input directly from teachers on such non-contract items as report card revision, sick leave pool, school calendar, health certificate requirements, field trip regulations and so on.

5) It usually results in teachers getting better financial settlements because they are able to appeal directly to the Board's sense of fairness and understanding of the financial needs of the teachers.

6) It allows teachers to have direct input into Board policy. If also is probably the only means teachers have of giving voice, either in a positive or negative manner, to administration guidelines, job descriptions, school routines and the like. (For example, should administrators be responsible for discipline and to what extent; corporal punishment; responsibility to the public, particularly in settling parent problems.)

7) It allows teachers to have a direct voice in selecting and allocating of staffing, such as how many school nurses, counselors, reading teachers and aides. Teachers are able to present their rationale of why they think such a staff is necessary.

8) The teachers become aware of the financial situation of the district and are more likely to support bond levies and special elections because they know the real world. They are also more likely to accept a financial package if they know the monies available.

9) Teachers become facilitators of many community programs and promotions, such as PTA, sports event, carnivals, opera, plays, musicals. Also on another level, the Needs Assessment instrument is a result of teachers' input on curriculum committees and feedback in negotiations on discipline problems, attendance, motivation, class size.

10) Teachers become "salesmen" for all district programs because of their direct exposure and influence on the students they teach and parents.

11) Teachers are able to present rationale on such items as class size, improvement of relationships between administrators and faculty, development of grievance procedures, student discipline. All these items are discussed during negotiations.

12) It allows all board members to be more informed, from a "grass roots" level, so they can better answer questions and complaints of patrons.

13) It provides the Board with another viewpoint of problems or situations existing in the district, so members can better evaluate evidence in airing problems, especially before the problems reach grievance proportions.

14) It allows the Board to create study committees and other research groups because they know the need exists.

15) Teachers and board members can respect the task each is responsible for and thus respect each other more as persons. Each is less a name and a figure and more a person.

16) It enables the Board to exert directly its decisions and authority, rather than having to rely upon delegating it or relaying ideas or decisions that may suffer misinterpretation in the process.

17) It provides an open and democratic setting where patrons and other teachers alike can observe the negotiating process at work. It eliminates any suspicions or possibilities of "undercover" workings.

18) It requires the Board to be more knowledgable because it has to deal directly with the teachers' team, consequently this enables the Board to have more credibility in the eyes of both teachers and the community.

19) Likewise it requires the Board and teachers to be more professional and responsible in their actions and statements, knowing they are on public view.

20) It enables the Board to deal directly with the duties prescribed for them by law in their capacity of board members.

Disadvantages of Negotiating Directly with the School Board

1) It is more time consuming for board members. It requires their presence.

2) It requires board members to keep up to date on financial affairs, laws, education philosophy and the latest developments in all aspects of education.

3) It requires board members to answer directly to both the public and teachers; a member can't say, "I don't know, I wasn't involved."

4) It allows the possibility for ill feelings to exist, if all parties are not behaving and reacting in mature, professional, responsible ways.

5) The Board is not always able to defend or support the administration's position, when evidence contrary to that position is presented by the teachers. This forces the Board to be fair and impartial.

Initial attitudes at the negotiating table are critical. The responsibility for fashioning attitudes is more heavily placed on the board's side than on the teachers' side. It takes two to tango, but it takes one to lead and this is the responsibility of the managerial staff.

Just as the classroom teacher who is competent and able organizes his class from the very first moment of the school term to show his competence, the school board's team and chief negotiator must begin from the very first encounter to show the teachers ( or non-teachers ) that they are just as competent and just as able. The initial procedures and opening gambits present an image to the other side. When bargaining begins, the district's procedures should be ready to go. The team must be organized. Opening moves should be made just as an opening move in a chess tournament and the district's team should be prepared to counter with good defensive moves as the need arises.

## Negotiations Organization

Figure I and the following outline privide a look at organizational models and responsibilities for a school district's negotiating team in preparing to negotiate with an employee organization.

### NEGOTIATIONS ORGANIZATION AND RESPONSIBILITIES

I. Board of Education

    A. Sets district policy consistent with long-range goals and objectives.

II. Superintendent of Schools

    A. Insures decisions and recruiting actions are consistent with district policy, goals and objectives.

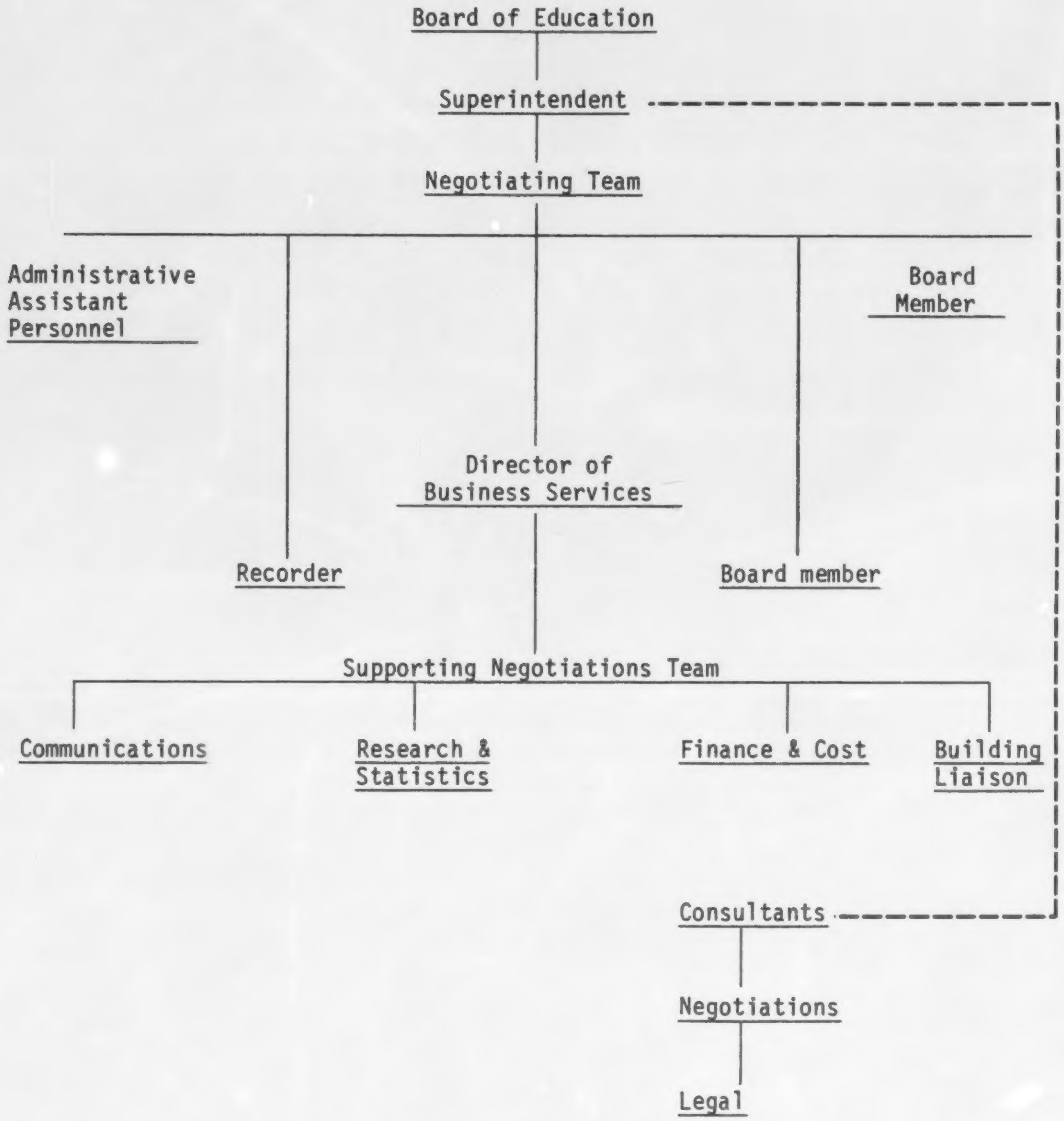
    B. Advises, counsels and consults with the Board of Education on significant developments.

    C. Communicates and consults with other districts in the area about significant developments.

III. Negotiating Committee Chairman

FIGURE I

A Model Organizational Chart and Position Responsibility Statement


Board of Education
Superintendent
Negotiating Team
Administrative Assistant Personnel
Board Member
Director of Business Services
Recorder
Board member
Supporting Negotiations Team
Communications
Research & Statistics
Finance & Cost
Building Liaison
Consultants
Negotiations
Legal

A. Advises the superintendent of significant developments.

B. Consults with state School Boards Associations for service and assistance on matters involving compensation, benefits and forecasting trends.

C. Consults with legal and negotiations consultants for assistance on matters of negotiations.

D. Meets on a regular basis with other chairmen of negotiating teams in the immediate area.

IV. Primary Negotiating Team

A. Will consist of

1. Chariman -- Director of Business Services.

2. Member -- Personnel Office.

3. Member -- Board member (2).

4. Member -- Consultant negotiator.

B. Will have the following duties and responsibilities.

1. Represent the district in negotiations.

2. Compile and prepare negotiation data.

3. Consult with the superintendent and Board to determine district position on issues.

4. Maintain communications with staff members who are involved as a result of negotiations.

5. Assign projects to supporting negotiating team.

C. May receive assistance as required from legal and negotiations counsel.

V. Supporters of Negotiating Team

A. Shall assist as follows:

1. Communication

a. Assist primary negotiating team by information for transmittal to appropriate parties through use of various media.

b. Provide the members of the Board of Education with full written information concerning the status of the negotiating process.

c. Obtain and review information from the negotiating team for presentation to appropriate individuals for further communications.

2. Research and statistics

    a. Conduct surveys of wages, salaries and working conditions in local area.

    b. Furnish statistics necessary to back district position on bargaining issues.

    c. Preparation of Negotiations Manual.

3. Finance and cost

    a. Determine costs of items, programs and proposals submitted at negotiations.

4. Building liaison

    a. Assist the primary negotiating team by information transmittal and interpretation to and from staff members.

    b. Assist in an analysis of proposals made to or by the negotiating team.

    c. Serve in an advisory capacity to inform the negotiating team about how the negotiations package will affect the building principal.

B. Shall assist in such other duties as assigned by the negotiating team.

VI. Consultants.

A. Negotiations

1. Furnish guidance and service as required on matters of procedure during the negotiating process.

2. Act as a sounding board for district proposals and responses.

3. May participate in actual negotiations at the request of the negotiating team.

B. Legal

1. Furnish guidance and service as required on legal matters regarding the negotiating process and agreement.

2. Insure proper wording and mechanics to avoid ambiguities and to insure that the intent of the parties is manifested in writing.

Throughout this chapter, elements of successful negotiations have been reviewed. Although there is no standard procedure to follow, here are some hints that may help the management team succeed in bargaining sessions.

1) The labor contract provides for competition.

2) Look at each proposal to determine present and future impact and costs.

3) Ask for revisions of the present contract that strengthen management control.

4) Collective bargaining is a two-way street--the union will often "trade" to get what it wants.

5) Use the counterproposal to its maximum potential.

6) State at the beginning that the agreement becomes an effective contract on the date signed and is not to be retroactive.

7) Make sure the district does not relinquish important rights.

8) Analyze carefully any suggested contract language before agreeing to avoid "give-away" clauses and future interpretation problems.

9) There is a duty to bargain in good faith, but that does not mean agreeing to anything.

10) Be aware that unions are political organizations and consider face-saving devices.

11) The final contract should be checked by a competent attorney to make certain its provisions will hold up and the district is on sound legal ground.

12) Negotiate from an old labor agreement and the district's own proposals.

13) Control the meeting.

14) Listen carefully to all union proposals.

15) Deliberate before committing.

16) Major concessions should be contingent upon reaching a complete contract.

17) What has been carefully obtained or preserved in one clause should not be circumvented in another.

18) Keep abreast of what employees are thinking and reading.

19) Consider the impact of any agreement on the total community.

Here are a few more proposals to help the management/labor relationship remain intact without management relinquishing too much of their own rights. Team members and others should:

1) Discuss what the other fellow wants to talk about--even if you don't propose to do anything about it. Don't waste time discussing whether or not an item should be on the agenda.

2) Do your homework thoroughly and know your subject. Get the facts and be prepared to cite them. Anticipate and study the position of those who will be talking with you.

3) Know how far you can go in agreeing to union demands -- and what your limitations are.

4) Be sure you are communicating with each other. Be alert to possible misunderstandings. Make sure that what you say is understood by the listener. Know the personalities of those at the conference table, their background, peculiarities, status and mission.

5) Discover what is really important to the other fellow. Are you conceding something he really doesn't want and exposing yourself to further proposals which at first you did not correctly asses as being of prime importance to the union?

6) Try to determine what the union is trying to convey to you, and what is important to it. Study how to present a proposal that is acceptable without detracting from the substance of your own position. The union will often want something to show its constituents that makes a bit of sense.

7) Develop techniques on how to talk about disagreeable subjects. Avoid placing the union in a "red-faced" situation. Ask questions, enough to indicate that you know what is going on, and thur prevent him from losing fact. Questions can show that you are sufficiently informed, without coming out and telling him that you know he is wrong.

8) Try to take the initiative and present the first draft of proposals. This sets the tone and structure of the presentation. The draft should have elements of flexibility so that is can be modified to fit the needs of the situation.

9) Make drafts simple. Poorly written drafts scare people off.

10) Find points of overlapping interests. Similar interests contain less argument, call for less persuasion and are a good place to begin.

11) Let the facts talk for you when presenting a point or a case. People accept facts more readily and are more doubtful about oral arguments.

12) You are not out to win arguments. Don't try to cover every detail. Stay on the main line.

13) When do you talk? When do you listen? When do you take the lead? When do you let the other fellow run out his string? Sometimes when you say little and let the other side talk itself out, you get a feeling of how things go, how people line up, what you adversary is thinking. Sometimes your silence creates doubts or uncertainty in the other fellow's mind about how you are going to react.

14) About the negotiator: he must be a good judge of men; he must be a man of his word; others must trust him; he must have credibility.

15) About those you are dealing with: Try to judge how far you can go with them; how far you can trust them; how candid you can be. This is an area of judgment.

16) The one basic quality you must have as a negotiator is patience. Invariably, the other side gets an advantage when you appear to be in a hurry.

17) Do not overlook humor. A good anecdote, a funny story in point or a good joke, often is the medium that breaks tensions and relaxes the tough atmosphere that seems to exist.

18) Be flexible. Be prepared to change your drafts to lend more palatability without destroying the substance of your position. Look for the unexpected and be prepared for sudden counterproposals. Prepare in mind your own counter-suggestion to your original proposal. Negotiations that move along tend to avoid unnecessary impasses.

19) All of this adds up to: Preparation, self-analysis, study of your adversaries, meeting of the minds on what is being talked out, patience, flexibility, timing and use of facts--all of which contribute toward clearing the points on which you must gain your objective--and those on which you can yield.

## Chapter 6

# THE LABOR SIDE OF THE TABLE: A CASE STUDY OF TEACHERS AS AN INTEREST GROUP IN CANADA

By H. M. Nightingale

A good deal of the recent literature has focused on the phenomenon of "teacher militancy". Its symptoms, characteristics and eventual form have been reviewed with the ultimate resolution being sought through administrative reorganization.[1] This chapter demonstrates that the teachers of Ontario are an effective interest group and that teacher militancy is but a vehicle used by the interest group in order to seek its objectives.

Specifically, this chapter presents a case study on the development, passage and ramifications of Section 9 of Bill 100. An Act Respecting the Negotiation of Collective Agreements Between School Boards and Teachers (July 18, 1975). Inevitably, a study of this nature must include a clear understanding of: interest groups, democracy, and local government. It is only through an understanding of these terms that the process can be fully appreciated.

### Background

In 1969 the Provincial Government commissioned an inquiry under the auspices of Judge Reville to bring forth recommendations which would serve as the basis of legislation governing teacher/board negotiations. After considerable input from all major elements and publics, the report became public but was not in its final form acceptable in total by school boards, teacher federations or the Minister of Education.

The Reville Report commented and recommended that "educational policy" should be excluded from the sphere of negotiations. The matters properly subject to negotiation and appropriate for inclusion in an agreement are the schedules of salaries and monetary fringe benefits accepted in past years as negotiable items by both teachers and trustee organizations.

Although the comments on this recommendation in the Reville Report seem to be trapped in "semantics", it is clear that even the minority report by Mr. Onyschuk would support a position that would exclude matters of "educational policy" from the sphere of negotiations. As Mr. Onyshuk stated, "by educational policy, are meant matters, relating to the size of the classroom, the pupil/teacher ratio, matters of curriculum, the development of teaching aids, etc."[2] ......"these matters of course affect the conditions of employment under which teachers work, but they are items which involve trustees' privileges and responsibilities (or management rights, if you will) and should therefore be dealt with in the consultative process ......and not at the negotiating table."

The Reville Report emphasized, ".......that the position taken by school boards on trustees' privileges and responsibilities is not only legally sound under the school acts, but also administratively essential, and concludes that only the amount of 'compensation' paid to teachers should come within the scope of negotiations".[3]

In the intervening years prior to the next action emanating from the Reville Report, the Ministry of Education had undergone a change in leadership. The incumbent Minister of Education undertook further pursuance of developing legislation governing teacher/school board negotiations for a number of reasons. One was the increasing frequency of teacher/board conflict which operated in its own milieu and by its own rules, none of which could be defined in legislated terms. The appreciable problem centered upon the lack of formal rules outlining powers, rights and responsibilities of the parties during a negotiation conflict. As the number of conflicts began to increase, school boards more vocally urged the government for legislation which would set forth a framework for negotiations.

Local teachers utilized various sanctions against school boards in order to make the school boards reconsider their position. Mass resignations, study sessions, work to rule, were the most common sanctions implemented by the local teachers. In 1973 the jurisdictions in a conflict situation could be followed by tracing the route of Highway 401. In the east from Prescott-Russell to the southeast in Windsor, school boards were in salary negotiations conflict with their teachers.

In order to retain some solvency to the growing crises, the Education Minister, Hon. Tom Wells, introduced Bill 274 on December 10, 1973. Referred to as an interim bill, Bill 274 had the effect of voiding mass resignations (valid individual resignations were allowed) in order that schools could resume normal operation by Januray 1, 1974. At the same time, binding arbitration was introduced as the process to be utilized as the vehicle to resolve those situations where agreements had not been reached. Teacher response to the Government's action was unprecedented. Five teacher federations, under the auspices of the Ontario Teachers' Federation, staged a one-day protest strike to signal their opposition to Bill 274. The initial impact of the protest was to remove over 100,000 teachers from their classrooms, followed by a march of approximately 35,000 teachers onto Queen's Park.

Of secondary impact to the mass demonstration was the ability of the teachers to solicit support for their position. The Canadian Labour Congress, the Canadian Union of Public Employees, the Ontario Medical Association and other unions and professional associations threw their support behind the teacher protest. Bill 274 did not go past its first reading.

Concomitant with the larger teacher protest movement, teacher disruptions at the local level continued. Of considerable import was the 1974 York County dispute which was resolved through Bill 12--an order returning the York County teachers to work and referring the dispute to compulsory arbitration. The significance of this Bill has not received the full measure of study it merits. In the milieu of teacher upheavals and teacher claims for the negotiability of their conditions of work, Bill 12 stated the following:

> "Pupil-teacher ratio is arbitrable and shall be deemed to be included as a matter in dispute in the notices referred to in subsection 1"
>
> (Section 3, subsection 2)

While no formal legislation was passed governing teacher/board negotiations, Bill 12 incorporated a position opposed by both trustees and the Reville Report, but supported by teachers. The arbitrability of pupil-teacher ratio was an incremental gain for the teachers. Further, the Bill established a precedent as to the possible outcome to other jurisdictions who were unable to resolve their negotiations on such related matters. The dike had been breached through legislation. The invariable consequence in regard to further legislation may not have been self-evident, yet it was bound and committed. A consequential triumph had been accomplished with only the detail to be embronzed in law.

In reaction to the growing crisis developing in the province, the Provincial Government introduced Bill 275, a Bill governing teacher/board negotiations and the forerunner to Bill 100. It would be difficult to say whether or not hte government was serious in passing this bill or whether it was a form of "white paper" allowing all interested parties to respond. However, due to the number of briefs received by the government, and numerous modifications recommended, Bill 275 was still-born.

The difficulty of ascertaining whether the government was truly interested in passing Bill 275 was blurred by a teacher march of approximately 35,000 teachers on the Legislature on December 18, 1973. The effects of the teacher protest movement of the Provincial Government cannot be measured. Suffice it to say, Bill 275 did not receive a third reading in the Legislature. The three expressed major goals of the teacher federations were the right to strike, open-scope negotiations and that principals and vice-principals remain members of the "branch affiliate" and maintain all rights accorded the local teacher.

Bill 100 provided the teachers with their objectives with the exception of the matter of principals and vice-principals. The purpose here is not to dwell on all these three aspects; rather focus attention on the development and implication of "open-scope negotiations". From a school board and local government perspective, the issue of open-scope negotiations was one which was not only paramount as to what is negotiable, but rather "who will govern". Teachers sought open-scope negotiations as a means of becoming partners in the education decision-making sphere and presenting a vested interest in the allocation of resources. School boards saw the situation far more fundamentally.

Therefore, the thesis of this chapter remains as one seeking to show that teachers are an effective interest group and that teacher militancy is but a vehicle of interest group behaviour seeking to accomplish its goal of bilateral decision-making power.

## Interest Groups

First and foremost, "interest groups are collectivities organized around an explicit aggregate value on behalf of which essentially political claims are made vis-a-vis government, other groups and the general public."[4]

As Bently maintained, "without an interest, there is no group, both can only be analyzed by their actions". In his view "Bently" the concepts "groups", "interests" and "activity" are precisely synonymous. "Society is nothing other than the complex of the groups that compose it".[5] Latham has taken the view that "(organized groups) are structures of power because they concentrate human wit, energy and muscle for the achievement of a given purpose."[6]

Pross, however, presents a more concise definition and one which is used for the purposes of this chapter when he states:

> "Pressure groups are organizations whose members act together to influence public policy in order to promote their common interest. The chief characteristic of the pressure group is the fact that is tries to persuade governments to pursue the policies it advocates. In so doing, it uses various techniques of persuasion--the force of public opinion, the threat of economic sanctions, the logic of well prepared arguments--which exert pressure on the government".[7]

As enunciated in the definition of interest groups, it was noted that ".......the chief characteristic of the pressure group is the fact that it tries to persuade government to pursue the policies it advocates". Prior to setting forth a hypotheses, consideration should be given to the characteristics of interest groups. Basically, institutionalized groups have four inherent properties:

1) Pressure group activity must have continuity if it is to have a lasting effect--a formal organizational framework.

2) Common objectives must be identified, strategies worked out, modes of procedures adopted, consistent positions formulated to persuade government.

3) Organizational capacity--the articulation and aggregation of common interest.

4) The desire to act in the political system.

It is also characteristic of members of such groups "to turn to the state to gain a monopoly in their given sector".[8] Such goals are often articulated in terms of some larger "public interest". [9] The perspective of the group interests may be concomitant with the welfare of the larger community, but as Arthur Bently insisted, there is no way of demonstrating "a group interest of society as a whole". And yet, there are institutionalized organizations who have definite goals as such, and who in turn institutionalize this value--the public interest as a cornerstone of the organization.

If it can be held true that "democracy is a system in which through compromise, the competing demands of interests may be satisfied while the decision-making mechanisms of government continue to operate, [10]" how can Government compromise values that are held so strontly by competing interest groups seeking their objectives? Through what microscope does Government see what is in the best interests of the people? What assumption does Government make, in implementing processes seeking to resolve conflicting aims? Furthermore, what effect do competing institutionalized interest groups have on the government process in seeking attainment of their objectives?

No doubt, the functional structure of government, in addressing itself to competing interest groups, may not provide a visible rational process for its action, and yet such government action may be presented as rational. Typically, this process is what we call "politics", or as Crick states:

> "Politics is simply.....that solution to the problem of order which chooses conciliation rather than violence and coercion, and chooses in an effective way by which varying interests can discover that level of comprimise best suited to their common interest in survival."[11]

Hence, in seeking a process for conciliation, what effective way does government as the allocator of the scarce resource provide to strike that level of compromise, and simultaneously sustain a common interest in survival? Or, rephrased in more imparative terms, how does government resolve the schizophrenic nature of theories of educational administration? On the one hand "will of the people" that is expected in a larger social milieu that is institutionally democratic. On the other hand, there is the overpowering force of professionalism which by its nature asserts the right of the professional to tell the client the appropriate course of action."[12] This dichotomy assists our understanding of the role and operative terms of both government, the allocator of the scarce resource, and the interest group, the special interest.

The teachers of Ontario, through their local and provincial affiliates and umbrella organization possess the essential qualities of such groups: Membership, which implies structure and roles, a basic official raison d'etre by latent goals such a security, prestige and income for its membership and certain claims sought through an essentially political process involving negotiation and consultation with the public and private targets.

There can be little doubt that the failure of the Reville Commission in recommending a position on the scope of negotiations favourable to the teachers had a major effect on the times to follow. Probably more by coincidence than planning, the local teacher/board confrontations perpetuated the adoption and internalization of the goad (bilateral decision-making) within the framework of the teacher structure to share and to promote the common interest. Through the organizational capacity of the organization an articulation and aggregation of the common interest permeated its membership.

Teacher demands for a greater voice in the operation of the school system and their working conditions provided the necessity of continuity in seeking the organizational objectives. In some cases, disruptions of the school system during salary negotiations, through strikes, study sessions and mass resignations provided the initial successes in order to secure the continuity of the ultimate objective. Whereas the government legislative machinery was slow in grinding out teacher/board negotiation legislation, small scale victories were being won creating possessional rights. That is, how can the government take away rights won through collective bargaining? In essence, these victories were setting the foundation for the terms of the legislation. Of notable significance was the provision in the collective agreement between the Windsor Board of Education and its secondary school teachers.

> "All existing determination, authorizations, by-laws, regulations, rules, rulings, resolutions, certifications, orders, directive and other actions made, issued, or entered into by the Board of Education governing or affecting salary and working conditions of the members of District 1, O.S.S.T.F. shall continue in force during the term of this Agreement and after this Agreement until a new Agreement is settled between the two parties."

This clause was won through a long strike and the inability of the Board to resist the onerous pressures. Hence, the continuity of group pressure in seeking common identifiable objectives established the basis of the organizational goal. The immediate effect of such a contractual arrangement as set out in the above clause was to deprive the school board of the authority to change existing policies and practices without the consent of the teacher organization, where such change affects the rights or prerogatives of any teacher. Plainly, this type of commitment constitutes a major concession in terms of what are traditionally thought of as "management rights". This concession has obvious implications for the ability of management to respond to changing conditions and circumstances, particularly since teachers constitute the major productive resource in the system.

As states at the outset, the teachers of Ontario are an effective interest group, and teacher militancy is but one form of expression of the interest group in the pursuit of its objectives. In addition to the preceding, two other inherent properties of an interest group support and sustain the proposed thesis, namely, the organizational capacity and the desire to act in the political system. The events in the winter of 1973 clearly demonstrated both these properties. Bill 274 sought to terminate teacher disruptions of school systems and to resolve teacher/board negotiations to finality through compulsory binding arbitration.

Although the teacher reaction has been described earlier, it should be noted and clearly understood that the reaction was something greater than an aggregate of people coming together to voice their disagreement with the government--teacher militancy. What was demonstrated was the organizational capacity of an interest group to organize its large membership on an articulate basis in the name of preserving individual liberties. Secondly, this process supports the hypothesis that elites share several values of class, education and group membership that provide much of the basis for productive interaction among them, and that such socioeconomic continuities are reinforced in turn by some measure of ideological and cognitive homegenity that further enhances cohesion among them. Thirdly, the organizational ability to seek and obtain the support of other unions and professional associations increases the credibility and perceived power of the organization. Finally, the very act of demonstrating in both a physical and a non-physical manner against the government demonstrates the willingness of the organization to act in the political process. Therefore, the events of 1973 clearly demonstrate the nature of the organization as an interest group and that teacher militancy was but a vehicle of the group in the process of seeking its objectives.

The demise of Bill 274 also reduced the threatening position that compulsory arbitration would be a limiting factor to the organization in attaining its goals. Each teacher/board dispute provided an incremental gain in securing the common goal prior to the introduction of legislation governing teacher/board negotiations.

Similarly, Bill 275 was also left to die on the Order Paper with its limited concession to the teachers which stated the following:

> "Negotiations under this Part shall, where either party so requires, be carried out in terms and conditions of employment."
>
> (Bill 275, Section 190(i) )

The limitation to this concession was contained in subsection (2):

> "Where the negotiators are unable to agree that a matter is or is not within the scope of negotiations, the disagreement may be referred by one or both of the negotiating parties to arbitration under this Part and, where so referred, such disagreement shall be included with any matters that may remain in dispute and that are to be determined by arbitration under subsection (3) of Section 112 and, where the arbitrators decide that the matter in disagreement is within the scope of negotiations, they shall arbitrate such matter."
>
> (Bill 275, Section 109, subsection (2) ).

Neither Bill 274 which prohibited mass resignations and ordered compulsory arbitration to resolve disputes, mor Bill 275 which outlined a formal process for negotiations between the parties including a somewhat solicitous "open-scope" negotiations went beyond second reading.

Bill 274 and Bill 275 also marked the turning point in the interest group activity. No further mass demonstrations were conducted. Rather, the organization turned to the articulation of its position in a formal setting within the political process. Consistent positions were formulated and adopted to persuade government and opposition parties. A full-time lobbyist was hired to conduct the message to the members of the political parties on a face-to-face relationship.

In essence, the interest group vehicle of securing its objective was redirected to act in conformance with acceptable practices in the political system. Further, the inherent principles of interest groups were also demonstrated through the "organizational capacity of the interest group to organize" and its willingness "to act in the political process."

## The Process - Bill 100 - Democracy

The Social Development Committee, a Standing Committee of the Legislature, was the culminating expose of the interrelationship of the dichotomy of interest group and democracy. This dichotomy can be re-expressed in the "will of the people" versus "the overpowering force of professionalism". The teachers, as an interest group sought the right to pursue matters which would secure and sustain their professional status within the community.

The resolution of this dichotomy, "will of the people" versus "professionalism" may become clear by reviewing the process involved with its resolution. The process of Bill 100 was one which sought to spell out the relationship between school boards and their teachers. The introduction of Bill 100 followed a long timeframe of attempting to negotiate legislation which would be acceptable to both parties. The five- or six-year perios of negotiation and discussion prior to the introduction of Bill 100 was probably predicted by a government perspective. That perspective nourished on the assumption "that the likelihood of peaceful adjustment to conflict is increased if there exist institutional arrangements that encourage consultation, negotiation, the exploration of alternatives and the search for mutually beneficial solutions."[13] Conversely, the prospects of deadlock and coercion are increased if institutional arrangements severely inhibit such activities. In essence, the latter held true. Bill 10C was the ultimate imposition after failure by the parties to pursue with the government successful negotiation to their differences.

However, the introduction of Bill 100 did not repeat the earlier embarrassment sustained by the government. Rather than allow the parties (interest groups) to criticize and sustain support in their respective publics to challenge the government, the government responded by providing the interest groups with a vehicle, within the legitimate process of voicing their concerns prior to the passage of the Bill. The government allowed the parties to speak to each article in the Bill during the Social Development Committee hearing. Dahl's hypothesis held true, "the more dissatisfied they are with the results of past trials, the less likely they are to repeat the same methods". The government provided the competing parties with a forum for legitimatizing any final outcome due to their participation in the process. The Social Development Committee allowed each group to voice its concerns and position with the ultimate goal of hoping to secure the favour of the government to its disposition.

But it is here that one must stop and analyze the process one step further. It is typical in the study of interest groups to characterize the government as the disinterested party dispensing scarce resources. While in certain cases this may be true, the government itself should be considered an interest group. It may not be an interest group within the scope of our definition, yet it has values, goals and a stake in the decision ultimately arrived at.

The structure of the Social Development Committee was such that the government members outnumbered the opposition. Hence, the government could safely impose its position while under the guise and semblance of its neutrality and willingness to be persuaded. Nothing could be further from the truth. Government position was set on the major principles with little or no likelihood they would be amended after continous presentations by the parties. The government had secured through this "Committee" process, a legitimatization of the groups to the process, by their very participation, and had secured for the government a process for fostering the democratic model, while achieving its own ends. Or as Zeigler stated "Democracy is therefore a system in which, through compromise, the competing demands of interests may be satisfied while the decision-making mechanisms of government continue to operate".[14] Zeigler's definition is epitomized by the wording of Section 9 of Bill 100 which states "Negotiations shall be carried out in respect of any term and condition of employment put forward by either party." Wording notwithstanding, the intent of this section of the legislation reflects the view of the teachers in their submission to the Reville Commission. The objective was about to be accomplished and enshrined in legislation providing for the possibility of bilateral decision-making. In addition, this section of the Bill completed this one process of satisfying the competing demands of interest groups while allowing for the continuation of the decision-making mechanisms of government to operate.

### Local government

"Many groups of all types and sizes vie with pressure groups for the privilege of interpreting the public will to key decision-makers."[15] School Boards and trustee associations sought to explain their opposition to their teacher interest group petition through the Ontario School Trustees' Council. The Council took the role of interpreting the "will of the people" in presenting the view that the teacher position to Section 9 of Bill 100 was antithetical to the public interest. The trustees' position was predicated on a fundamental doctrine of democracy:

> "Democracy is a (political) system designed permanently to keep the power to elect governments in the hands of the people. This implies that: (i) at all times the political power of the voters is so limited that they cannot give it away permanently. In a democracy, the citizens retain the power to oust the

> government they elect by a new election and they cannot elect to give that power away."16

Any support of the Social Development Committee to open-scope negotiations would have the effect of according an interest group enhanced influence in the decision-making process which approaches effective veto power over the desires and judgment of elected representatives.

To the degree that educational policies governing the above matters are negotiable, the school boards would be transferring their decision-making powers to teacher federations. The concept of "trusteeship" is inherent in the concept of representative government. The establishment of school boards has historically been in keeping with the component concept of "accountability". If the matters of educational policy are transferred from school board control to teacher federation control--even if only requiring bilateral decisions--then trustees can no longer be held accountable for their decisions or changes in policy which did not emanate finally from the board.

The question then remains: "Who is accountable?" Under our present system of government, the teachers (and certainly the federations) are not accountable, for they do not have to answer to the public. But how can the trustees be held accountable if the final decision they were elected to make can no longer be made by the board? Should the public disagree with any change in educational policy or practice, whom do they seek out as accountable? In essence, the democratic concept of representative government could no longer apply since the final decision is no longer solely that of the board, since the trustees no longer control the system. Presently, should the public disagree with trustee educational priority, standards of education, educational planning and the organization of the system, the public can voice its disapproval and force change by holding those accountable at election time. To this date, learned educational experts and political scientists have failed to provide a better alternative to direct accountability to the present system of representative government. If, however, it happens that teachers, through their federation, are handed effective veto power over decisions of a board (as Bill 100 provides), how do you legitimate this power within a democratic concept of representative and responsible government once such power has been achieved?

The Ontario School Trustees' Council brought the salient issue to the forefront--who will govern? The dichotomy of interest group to democracy brings us face to face with the philosophical and value base underlying the democratic system of government. It is no longer merely a question of manipulating the political mechanism through which we will be governed, but raises the fundamental question of "Who will govern?"--the mechanism notwithstanding--the people through their accountable representatives, or unions that expouse idealism in the service of self-interest and the politics of status? The trustees held common the view:

> "That in spite of abvious perils, political decisions are--as long as we remain committed to democracy--

> logically superior to technical decision. If we are going to maintain the trappings of democracy in education, then the realities of democracy should be achieved. School boards should govern or be abolished."[17]

Inherent in our definition of democracy was the consideration and existence of local representative institutions. These institutions.....

> "are designed to meet the fundamental requirements of participation, discussion, and education. They do provide on the largest scale, an opportunity for the citizen to share in public discussion and administration, they do provide the machinery of discussion and vote to elicit his consent."[18]

However, the elicitation and consent of the voter is meaningless, as would be our trappings of democracy through our local institutions if teachers were equal partners in formulating educational policy. The Pennsylvania Labor Relations Board statement best summarizes and places the trichotomy in perspective when they state:

> "All professional goals of the respondent (teacher employee union) which are laudable but which have no place in the content of an employment contract since they infer that the school board and the education association (teachers) are partners in the education of the children. They are not. The teachers are employees. The policy making function in the public schools belongs solely to the school district and its board of education and their duly authorized agents."[19]

In essence, it is the "will of the people" versus "professionalism" dilemma. This was the question faced by the Social Development Committee in consideration of the issue of open-scope negotiations.

Positions and petitions were submitted to the Social Development Committee by teachers, trustees and other interested parties. The overall effect of the processes at plan on the decision of providing for open-scope negotiations is difficult to assess. However, there is one particular variable which of itself merits consideration in this issue. The government was able to withstand mass media attacks on its position, slanderous attacks, protest marches, public meetings on a normative basis. That is, there were no changes in the leader of the government nor a change of the Minister of Education. Less visible but probably more intrinsic were the psychological impacts of these actions on the government. Speculative at best, the psychological impact may have been of such a nature as to direct the course of events with regard to Bill 100. Perhaps this view, in part, answers our question as to the effect of competing institutionalized groups on the government in seeking attainment of their goals.

The speculation may be endless as to what effect the teachers as an interest group has in their ability to persuade the government to legislate "open-scope negotiations". The fact remains that open-scope negotiations are situated in provincial legislation. The teacher objective was met.

## Conclusion

It has been the purpose of this chapter to set out and describe the thesis that teachers of Ontario are an effective interest group and "teacher militancy" is but one vehible used by an interest group in an attempt to secure its objective. Naturally, this implies that an interest group is evident in the first place. Teachers, as a legally constituted and institutionalized body incorporate and exhibit the inherent properties of an interest group, namely, continuity; common objectives; an organizational capacity; and a desire to act in the political process. These properties have been tested in specific instance.

Illustrations and arguments have been presented demonstrating the teachers as an interest group in their desire to secure bilateral decision-making through "open-scope" legislation. Similarly, it has been shown that teacher militancy was but one vehicle implemented by the teachers in the seeking of their objective. The events of December 18, 1973, widespread local school board disruptions, and the failures of Bill 274 and Bill 275 to succeed, all reflect the "militancy" aspect of the interest group. The termination of the more vocal militant aspect to a greater concentration on the articulation and aggregation of the issue clearly illustrated the organizational capacity of the interest group. The transition from militancy to the articulation of the interest also marks the necessity of "continuity" in securing the common objective of bilateral decision-making. The securing of such an objective included a willingness to act in the process by affiliating with other political actors and challenging those who created the legitimate base of the interest group in the first instance.

It is regrettable that one can only speculate upon the degree of influence the teachers, as an interest group, were able to command over the government. Despite the fact the teachers achieved their objective, it does not negate the crucial need for more empirical work on what variables, or components of the interest group was the most important determinant in persuading the government to legislate "open-scope" negotiations. Nonetheless, this chapter has attempted to show that teachers of Ontario are an effective interest group and that "teacher militancy" is one vehicle used by an interest group to seek its objectives. Specifically, the case study on the development, passage and ramifications of Section 9, Bill 100, has been our vehicle in support of thesis.

## Chapter 7

# CHARACTERISTICS AND RESPONSIBILITIES OF THE SCHOOL DISTRICT NEGOTIATOR

By William H. Scott and Richard J. Toranto

Each year collective bargaining between employees and school boards becomes more widespread in school systems across the United States. Authorizing legislation or, in some cases, legislation mandating negotiations has been enacted in the majority of locations. There has been an attempt to have a federally mandated negotiations act which would require negotiations between school systems and employees across the country. This new activity has created a need for a position not formerly required for the efficient and effective operation of the school system. Many individuals believe that school negotiations can be an effective means to handle the differing points of view and the needs expressed by employees to have a part in determining their working conditions.

Negotiations is an adversary process where the two sides discuss proposals for changes in a school system's operation This process has pointed out the need for an advocate of a school board's point of view. In some school systems the task may be assigned to an outside consultant who has experience in labor negotiations. There is now a small group of these consultants who have school negotiations experience in addition to or, in some cases in place of, an industrial negotiations background. Some school boards may initially decide to deal with negotiations as a total board. These systems, usually smaller-sized districts, may be able to complete negotiations but frequently the Board will not have the time nor the expertise to expand the process to other employee units. In some instances, the superintendent may be assigned as the negotiator for the Board, but frequently, this becomes a burden because of the time and detail needed for successful negotiations. The superintendent should be a policymaker and not become enmeshed in the adversary proceedings that are involved with negotiations. The negotiator role for the superintendent is frequently a source of conflict with other responsibilities required of the chief administrative office of the Board. The task of negotiating with employee organizations is now being assigned to a member of the superintendent's staff, either as a full-time duty or as a part-time job in addition to other responsibilities. Not uncommonly, the director or personnel, the assistant superintendent for administration, or some other member of the superintendent's executive staff is a logical choice for this job.

### Importance of Negotiations

Regardless of the size of a school district, the main responsibility of the management spokesman for the school system is to make sound educational decisions involving salaries, wages, hours and working conditions. It is not necessary for school board members to be trained in negotiations, but they do need an understanding of bargaining with employee organizations. Failure to recognize that collective bargaining with employees is an adversary process will lead to a weakening of the Board's position. School board members should attend negotiations seminars presented by a variety of sources.

Effective negotiations will be an inevitable result of an informed Board. A Board has the responsibility and authority to conduct negotiations and must designate whom shall speak for management. In reality, this spokesman will be negotiating the largest budget expenditure in a given year (normally at least 75% of the entire school district budget). Additionally, with the broad interpretation of other working conditions at the table, the negotiator will be discussing virtually all significant personnel policies of the school system. Needless to say, the direction of the entire school system will be materially affected by what takes place at the bargaining table. In some systems, negotiations have become full-time, year-round experiences with numerous employee groups represented by national organizations such as the National Education Association, the Americal Federation of Teachers, the American Federation of State, County, and Municipal Employee, and other more localized unions.

In addition, as a natural consequence of being involved in this process, the negotiator is often the logical choice to develop other policies for the school system that do not appear in a negotiated agreement. Policy development for the Board on a unilateral basis still is the central method of seeing the school system is able to continue to function as a viable institution in a rapidly changing society.

In order to meet the demands of the negotiating process, a negotiator must maintain an effective working relationship with the superintendent, the Board of Education and members of the administrative staff. It is necessary that a negotiator constantly strives to apply the management team concept since it is virtually the only way to meet the total responsibilities of the organization. Several states now have legislation which allows the formation of a unit where school administrators may bargain separately from a teachers' union. But even in these instances, the school board must have a cadre of administrators who are not represented by a union and who are cognizant of the needs of the system as expressed by the Board. The negotiator cannot do it alone. However, there must be a single spokesperson where all views of the Board members and the superintendent concerning negotiations are expressed through the negotiator.

## Characteristics of a Negotiator

A negotiator must be a highly competent professional. The debate as to whether the negotiator should be a lawyer or an educator, part of the administrative staff or an independent, is in reality a secondary issue to the question "Who speaks for management?" If a negotiator is an educator, he must necessarily be knowledgeable of the law the quasi-legal proceedings including hearings and arbitration. If a negotiator is a lawyer, he must be knowledgeable of the education process and the impact negotiations will have on it.

The advantages and disadvantages of having a negotiator as part of the administrative staff or an outside independent can be listed. However, no matter what his background, he must bring certain competencies to the negotiating table.

In some school systems the negotiating is actually done by the entire school board. In these cases, the entire Board has an understanding of the demands and can present an official position immediately. Some board members feel an obligation to meet with employees since they are responsible to the electorate for the school operations and know that ultimately they must live with an agreement. Disadvantages of the entire Board serving as a negotiating team center on the amount of time required to attend meetings and the potential for personality conflicts and emotionalism to enter the negotiations.

If a Board decides to use a professional negotiator it can set limits on what the Board is willing to negotiate and board members do not have to spend hours at the negotiating table. Teachers frequently hire professional negotiators, so it is, perhaps, wise for school boards to do likewise. The professional negotiator can more readily weed out the real demands that teachers are willing to settle for.

The characteristics inherent in the competent negotiator, which in part are knowledge of human relations, include: the ability to be personable; possess a sense of humor; have patience, perception and the ability to understand people; have an intuitive sense of timing; carefulness, thoroughness, self-confidence; be a self-starter; and be tough and a no-man. As these competencies are viewed, like any other position of leadership the perfect person is sought. Human nature, being what it is, seldom combines all of these desirable characteristics in a single individual. Therefore, individuals who come closest to the model should be selected by a Board for the position of negotiator.

With the multitude of issues that come to the negotiating table certain characteristics are notably essential: knowledge and understanding of the array of issues and the ability to get along with people and convey the Board's position convincingly. The patience to listen to opposing views, the character to accept reasonable compromise without the emotional feeling normally involved in winning or losing, the sense to see humor and to be able to laugh at oneself in a process which is sometimes tiring and tension filled, are also highly desirable in the prospective negotiator.

The intuitive sense of timing, to know when or when not to present a proposal for maximum effectiveness, is a characteristic that must be demonstrated by actual usage in negotiations; the perception that management's negotiator is at times the no-man in a yes society is a trait that is increasingly difficult to find. Generally, employee organizations are the ones who seek change. The management negotiator must possess the mental toughness to say no with conviction, consistency and fairness.

Finally and ironically, through all of the posturing and puff talk to determine the real issues of the negotiating process, the bottom line is integrity. The employee organization must come to realize that the Board's negotiator is a person of his word. When the negotiator says no, the advocate for the opposing side must be aware that he means it. Conversely, when the negotiator says yes, the opposing side must have confidence that the commitment will be honored. It is not necessary that the adversaries like each other but it is necessary that they trust each other, otherwise there can be no meaningful negotiations. If the parties lack confidence in each other, they will necessarily ignore the negotiator and seek the source that they view as the decision-making authority who will keep its word.

In industry, a typical bargaining team for management would be composed of a personnel director, an individual from the industrial relations department and usually an outside labor attorney. Seldom, if ever, will the board of directors of a company negotiate with an employee union.

## The Negotiator's Role

The Board of Education sets the policies for the school system. The superintendent of schools administers those policies. The management team sees that the policies are administered, as directed by the superintendent, in practical day-to-day applications. The negotiator must be able to work effectively among these three organizational levels. Leadership in bridging the transition from the philosophical direction determined by the Board into sound policies that can be efficiently administered by the individuals at the local school or job level is an essential quality for any negotiator. The most important consideration the Board will make in regard to negotiations is the selection of its negotiator. If there is no member of the administrative staff who can handle this delicate balance in employee relations, then consideration should be given to employing an outside consultant in the field of education negotiations. This consultant should work closely with a staff member to train the staff person in the realm of negotiations.

Negotiations activity does not occur in a vacuum. There are community expectations and political factors that must be taken into consideration. Negotiations is a bilateral process where the philosophical concepts of the Board may be drastically opposed to the philosophical concepts developed by the employee organization. Representing the interests of the entire community regarding educational expectations, the Board has taken into consideration the community expectations in formulating the parameters within which the negotiator will operate.

The Board must also be cognizant of political realities particularly with respect to fiscal matters, whether the Board is fiscally independent or fiscally dependent. The Board must be acutely aware of the ability to fund the negotiated package which will be directly affected by the impact on the tax rate of the agreed changes in salaries, hours and working conditions. The Board must clearly establish financial limitations for the negotiator with the understanding that the negotiator will not exceed those guidelines. The possibility always exists that changes in the method of salary distribution or changes in benefits can drastically impact cost factors in negotiations. Assurance that no erosion should take place in the amount of time or type of services rendered for the same or more pay must be part of the Board's directions to its chief spokesman.

The negotiator must be equally aware that goals of the employee organization will not be in concert with their goals and expectations of the Board and the management team. The ability to perceive the real needs of the employees, not the needs demanded by the employee union, is another prerequisite for a successful negotiator.

The Board will want sufficient latitude to develop the policies it believes are in the best interest of the school system; the superintendent and administrative staff will want sufficient authority to carry out the mandates of the Board of Education. The employee organizations will work to limit both to provide their constituents with the least restrictive work environment in which they can perform their tasks independent of authority. In addition, employee organizations traditionally will seek financial renumeration and benefits beyond those which are deemed reasonable and affordable by Boards of Education.

The negotiating process by its very nature is an adversary proceeding which if not handled with utmost skill can degenerate into open conflict. The negotiator must present the Board's position in its most favorable light: that the position was formulated to provide the most favorable educational opportunities for youngsters in the district. The negotiating process is founded upon the common goal to provide the best possible education for youth with the resources available. In negotiating specific items, the negotiator must continually try to convey that the differences in position, regardless of how emotional they may be, are a matter of form and degree rather than an open display of hostility. The employee organization should be made to realize that the Board recognizes that to reach the common goal, employees should receive fair salaries and benefits, along with reasonable working conditions. Furthermore, the negotiator must impress upon the employee organization that the Board of Education, superintendent of schools and the administration must maintin sufficient managerial rights to make decisions necessary to maintain an effective and efficient school system. Generally, the moving party in negotiations is the union, but several areas do exist where the Board may make demands. These are, for example: an anti-strike clause, management rights, merit pay plans, and zipper clauses (clauses which allow time for administrators to become familiar with the negotiated agreement and they specifically state that negotiations will not be reopened during a specific time span).

Once successfully negotiated, an agreement must be administered. The chief negotiator will have primary responsibility for interpreting that agreement: advising and counseling adminstrators involved in complaint or grievance proceedings; serving as the person who hears complaints and grievances at the administration level; and serving as the advocate for the school system in arbitration proceedings. While negotiations are underway, the negotiator must keep the superintendent and the Board aware of all developments. If negotiations are not proceeding towards an amicable settlement, the Board must be aware of the unions' demands for settlement. The Board must decide whether to accede to the demands or to remain firm in its position. In any event, the Board should be guided by its own goals and objectives for education.

The following position description may be of some assistance as school boards determine the need for a member of the superintendent's staff to be an employee relations negotiator.

### ASSISTANT SUPERINTENDENT FOR EMPLOYEE RELATIONS

1) Serves as advisor to the superintendent and member of his staff on matters concerning employee relations.

2) Visits schools and other work locations to evaluate the working conditions of employees and consult with the local administrative staff on matters of employer-employee relationships and recommend necessary action.

3) Attends meetings of supervisors, principals and other administrators when decisions are being made which affect the working conditions of employees. Serves as a consultant for such meetings.

4) Conducts continuous review of the effectiveness of school board policies and determine the need for changes or the addition of new policies.

5) Gathers suggestions from administrators and supervisors for items that should be considered by the Board in planning negotiation proposals.

6) Prepares or assists in the preparation of all policies and salary schedules to be proposed by the Board.

7) Meets with employee organizations representatives and aids in the resolution of problems involving employer-employee relations where possible.

8) Serves as the spokesperson and chief negotiator for the Board in meetings, conferences and negotiating sessions with organizations representing employees at the school board.

9) Consults with the superintendent, department heads and appropriate administrative and supervisory personnel regarding the implications of proposals for negotiations from employee organizations.

10) Interprets the provisions of negotiated agreements to administrative, professional and non-professional employees and advises them on privileges granted and obligations imposed by negotiated agreements.

11) Sees that provisions of negotiated agreements with various employee organizations are implemented, including the completion of any studies required by the agreement.

12) Advises and assists supervisors and administrators in the resolution of employee grievances. Assists the superintendent when a grievance procedure reaches his level by preparing for hearings and gathering background material bearing on the case including applicable laws and precedents.

13) Performs other duties as required.

## Summary

The basic decision of who speaks for management must be made by each local school board based on its knowledge of the individual situation surrounding that district. Whether the Board as a whole, the superintendent, an outside consultant or a member of the superintendent's staff functions as the chief negotiator for the school system, can only be decided by the local Board. Since there is no definite set of experiences and training that predicts success for a negotiator, a Board must rely on the personality and viewpoint of the person who will be its chief negotiator representing the Board's views in negotiations. The negotiator cannot be overly prepared prior to negotiations. He must know the strengths and weaknesses of his opponent. Whatever method of selection, the spokesman must be one who will take the initiative, be willing to stand firm on points of vital interest to th school system and have the ability to bargain tough with the realization that negotiations continue year in and year out and life goes on away from the negotiating table.

The desirable approach to negotiations from the writers' point of view is to select an individual who will devote full time to the important aspect of negotiations. This person should:

* possess a thorough knowledge of human behavior,

* possess a sense of humor,

* be dynamic,

* be patient,

* have endurance,

* remain calm under stress,

- know the school operation,
- have professional integrity,
- be determined,
- be theatrical and
- easily communicate with others.

While seldom will all these traits be found in one person, a district should be able to secure the services of a person who possesses a vast majority of these characteristics.

## Chapter 8

# HUMAN NEEDS, SOCIALIZED BEHAVIOR AND THE NEGOTIATOR

## THE NEED FOR CONGRUENCE

By Dr. William J. Leary, Jr.

The role of the chief negotiator for a school board is one which deserves examination. This is especially true because some bargains are being struck at the negotiating table which have adverse consequences for schools, communities and the political governance set up by state legislatures to provide a thorough and efficient public education for children. It is not the purpose here to argue for the employment of a chief negotiator so much as it is to describe the traits and characteristics which should typify whomever performs this function. Individuals who have little knowledge of the bargaining process are at least in our Commonwealth, negotiating away policy considerations and what has always been managerial prerogative, in order to save a few short-term dollars. This is most unfortunate because, in addition to relinquishing ultimate control of a school system to special interest groups in what should be policy areas, they are sowing seeds which will be financially difficult to manage in the years ahead.

Schlichter, Healy and Livernash[1] identify three principle ways in which union management contracts limit managerial discretion:

1) The contract requires that management follow rules for layoffs, transfers, promotions, retirements, assigning overtime and setting production standards and rates.

2) The contract requires that management be "reasonable" or "fair" of that management act only with just cause, or after consultation with the union or with the consent of the union.

3) The contract prohibits certain types of conduct such as excessive overtime.

If these constraints are applied to public school bargaining by including in a contract items such as suspension, furlough, transfer, employee performance evaluation, class size and just cause, to name only a few, the right of the board of education to control policy in these areas is undermined and the right of the middle manager or the building principal to direct his staff is severely impaired. Teacher unions, by forcing or coercing boards of education to capitulate by including these items in a contract, have succeeded in undermining the board's and the public's right to direct and control the school system in the policy area because items included in the contract become subject to the grievance procedure and ultimately to compulsory binding arbitration. A non-involved third party force, an arbitrator or an arbitration panel, then makes all of the crucial decisions where disagreement exists between the union and the board.

This writer would like to make a case for careful scrutiny by a school district in the selection of a chief contract negotiator. The basic point to be made is that the value system or belief system of the chief negotiator must be similar to that held by the board of school directors; there must also be similarities in the value structure of the negotiator and the management team which will administer a contract on a day-to-day basis. The elements to be included in a contract, and the language setting forth these elements will be a function of the value structure of the board and the chief negotiator.

T.C. Lockhart[2] identifies several essential characteristics of a chief negotiator:

1) How to say no effectively.

2) The ability to inspire confidence.

3) Personal ingenuity.

4) The ability to "take it."

5) The ability to laugh at oneself.

6) The knowledge of economics.

7) The ability to speak and write.

In a similar vein, Chester L. Karrass[3] lists the seven most critical traits which a chief negotiator should possess:

1) Planning skill.

2) Ability to think under stress.

3) General intelligence.

4) Verbal ability.

5) Product knowledge.

6) Personal integrity.

7) Ability to perceive and exploit power.

It would be difficult to deny that these traits are desirable ones and that the competent negotiator should possess them. Further on in his discussion of the negotiator's performance, Karrass[4] makes the point that people who place others on the defensive do not convince them....people who belittle the opinions of others, are argumentative or who reflect sureness about their own viewpoint make opponents hostile. He argues for bringing friendliness and sympathy at the bargaining table, requesting advice from the opponent and appealing to his higher motives of fairness, worth and excellence. It is his thesis that in behaving this way the negotiator has a better chance of changing an opponent to his way of thinking. Karrass[5] also believes that in every negotiation it is possible for both parties to help each other at no expense to themselves. If each understands the problems of the other and openly tries to solve these problems together, both can benefit. Other researchers have made a case for cooperation between employer and employee. Ashley Montagu[6] states, "the principle of cooperation is the most dominant (in man) and biologically the most important." Argyris[7] espouses the same ideals when he said, "mutual understanding, trust, self-esteem, openness, internal commitment, fully functioning human beings who aspire to excellence...these values can not only be protected but indeed increased in an industrial setting." Slater and Bennis[8] describe the same type of democratic characteristics as being desirable. They argue for free communication, influence based upon competence, not position, acceptance of emotion as fact and a human bias in dealing with conflict.

These views of negotiator behavior should be considered against the background of public sector bargaining. Dr. Kohler, in an earlier chapter makes the point that the adversary relationship of public sector bargaining is a given. This adversary relationship must be managed, however, to assure that: (a) an attempt is made to develop a true trust relationship between the parties; (b) the honesty and integrity of each of the parties to negotiations is promoted; and (c) the human needs of the employee group are recognized and dealt with in the negotiations process. Process, i.e., the manner in which the needs of the parties to negotiation are fulfilled, may be more important than the outcomes themselves. This is so because there is no way to secure outcomes in the union contract which will protect the interests of school children or the public, without the creation and promotion of a climate of trust.

The central point of trust between the parties is that an alternative vehicle for the discussion of organization problems, outside the confines of the union contract, can only exist and function properly in such a climate. That vehicle is known, in the state of Pennsylvania, as meet and discuss and in others as meet and confer. This vehicle allows for the solution of real problems outside of the contract itself. In order for meet and discuss to be effective, the union must see the motives and behaviors of the employer as humane and as meeting the needs of the union's membership. The school board and its hired negotiator must, therefore, have a basically decent value structure and subscribe to the beliefs set forth in McGregor's[9] "theory Y" construct. Here, bargaining unit members are seen as basically self-motivated, possessing a readiness to direct their behaviors toward organization goals, active and positively inclined toward orderly change, possessing positive human characteristics and fully able to participate in decisions involving attainment of the organization's goals while satisfying their own ego egotistic needs. The superintendent and the district's middle management personnel must, at the direction of the board, practice "theory Y" management behaviors. These include sensitivity toward the feelings and needs of the employees so that they might be able to recognize and development their own talents, and the ability to release potential in others by removing obstacles to growth and providing guidance and support to employees on an individual basis.

Such a positive outlook is congruent with the needs heirarchy set forth by Maslow.[10] This heirarchy of prepotency assumes that once the basic physiological and safety needs of people have been satisfied, needs in the areas of love, esteem and self-actualization arise and require means of satisfaction. Thus, human needs for status, creativity, appreciation and personal identity emerge within people in organizations; to the extent that these human needs are satisfied, conflict and the potential for serious confrontation within the organization are reduced. This can be reflected is a reduction in the amount of conflict at the bargaining table and may, therefore, determine, to a large extreme, quality and type of negotiator which the board will employ. Others such as Nierenberg[11], Murray[12] and Bennis[13] have given strong support to the needs theory as a basis for the actions of a public organization and for the requisite behavior of the negotiator who represents that public entity.

This point of view of the importance of meeting human needs as a critical prelude to the bargaining act, and the behavior of the negotiator, is well expressed by Warner and Hennessy[14]:

> "Clearly collective bargaining is now a fact of administrative life in many parts of Canada and the United States... to say collective bargaining has become a reality of public administration does not imply that its present form and methods everywhere gain support and acceptance. From the mid-1960's onward public management may be expected to spend more rather than fewer hours at the bargaining table. While some public managements may wish to avoid collective bargaining, or even destroy it, they can no longer ignore its existence as one method of dealing with their employees.. but once the decision has been made to go the collective bargaining route, the most practical approach is for public management to discover how best to fit it into the framework of the public service."

Warner and Hennessy[15] then make an excellent point which reflects the central thesis of this paper:

> "Success or failure of public management at the bargaining table may well depend upon attitudes. There is such as favorable attitudes. They embody outlooks like these:

'Let's look at the proposition with an open mind.'

'How would I react if I were in the other fellow's place?'

'If the proposal reflects public interest, and it can be done, let's give it a try.'

'Even though I am an experienced manager, when it comes to dealing with people I recognize I do not have all the answers.'

'Should I deny my own employees rights and protection similar to those accorded workers in the private sector?'

Before a final case is made for management to utilize its considerable influence to perpetuate humane behaviors and a legitimate negotiations personality, mention should be made of industrial peace and its contributing causes. The basis of progress in public sector bargaining is the maintenance, or at least the promotion of, low conflict scenarios in and prior to the bargaining process. Deutsch[16] sets forth his views on the conditions for industrial peace and the importance of harmonious union-management relations:

> "It is relevant to ask, for example, under what conditions the institutions and procedures of collective bargaining between union and management result in industrial peace rather than industrial warfare."

Deutsch[17] then goes on to report on an extensive study by the National Planning Association, which included many of the leading scholars in the United States and which produced fourteen monographs of case studies of industrial relations. He lists the following basic causes of industrial peace:

1) There is full acceptance by management of the collective bargaining process and of unionism as an institution. The company considers a strong union an asset to management.

2) The union fully accepts private ownership and operation of the industry; it recognizes that the welfare of its members depends upon the successful operation of the business.

3) The union is strong, responsible and democratic.

4) The company stays out of the union's internal affairs; if does not seek to alienate the workers' allegiance to their union.

5) Mutual trust and confidence exist between the parties. There have been no serious ideological incompatibilities.

6) Neither party to bargaining has adopted a legalistic approach to the solution of problems in the relationship.

7) Negotiations are "problem centered"--more time is spent on day-to-day problems than on defining abstract principles.

8) There is widespread union-management consultation and highly developed information sharing.

9) Grievances are settled promptly, in the local plant whenever possible. There is flexibility and informality within the procedure.

If these causes of labor-management peace are to be considered valid, and if the rationale for this type of integrative relationship is worth promoting, then the alternative of strict management controlled staff and line authority is worth examining. The question to be posed is whether the formal organization and its management structure, based upon close control, can succeed in making the organization viable. A case study by George Homans[18], the conclusions of which are used in training prospective Air Force officers at the United States Air Force Academy, suggests that the so-called rules of efficiency cannot account for organizational effectiveness. The conclusion was that, in an industrial setting, production was a human phenomenon, and therefore had to be controlled by human factors as well as by physical factors.

School boards and their negotiators would do well to understand Homans' findings. They were that if the prescribed activities of a group do not satisfy the members' needs, they will develop other activities that will; these activities will increase group interaction and thus promote a climate for liking in the group; this liking will further promote interaction and create the informal organization which will likely work at cross purposes to the formal organization. Leadership will then emerge in the form of a person who best represents the norms expected by the group. The result, as expressed in the manual Human Relations in Management[19], is that the real organization (which emerges) bears no relationship to the organizational chart. Things trivial to management matter much to the employees and help to dictate what takes place in the workplace. Also, leadership of the informal organization evolves from the needs of the group, not from the formal organizational chart.

One can appreciate the position of H. M. Nightingale in an earlier chapter when he describes the position of a school board which has been deprived of its right to change existing policy, without consent of the union. Open-scope negotiations, as he describes it, is similar to the condition under which a Pennsylvania school board consents to the proposition that anything is negotiable. Even in the face of a lengthy and bitter strike, the concept of "anything is negotiable" must be resisted. This is the only way that the public's interest in a measure of control can be assured. Beyond acceptance of this fact there is much that the board and its management team can produce, in the sense of a humane and value centered environment, in the day-to-day operation of the school system, to make the selection of a chief negotiator a moral as well as a skill-based choice.

In an earlier chapter, Scott and Toranto list as their first personal qualification, a negotiator who will possess a thorough knowledge of human behavior. This writer concurs in this view and goes further to state that the humanitarian stance of a board as passed on to its management team in district policy will provide the basis for the selection of a chief negotiator. If this person does not share the human needs predisposition of the board, he will create difficulties for the district regardless of his technical skill. As a number of people have pointed out, a man cannot defend things (propositions) which he does not believe without looking rediculous to those he is trying to lead. The chief negotiator then, is like the technologist "who assesses the impact of what he is about to do on other members of his organization and provides for it--mostly by communicating with them."20

The choice of a chief negotiator should take into consideration the socialized behavior pattern of the individual being considered for the position. The humane school environment and a management philosophy which promotes self-actualization of the employees demands a negotiator who subscribes to this set of values. The board and management team should insist that such a person be legitimate with them in terms of conviction as well as in that person's ability to carry out a role. Beyond technical considerations of competence, thie choice may very well be the difference between settlement and a protracted strike.

The choice may be better stated in this way. The opposite ends of the spectrum are as follows:

1) A union stranglehold which succeeds in requiring that management act on certain essential matters only with the consent of the union...

or......

2) A management stranglehold in which the worker is used and abused, deprived of his valid contribution to organizational prosperity and controlled in all of his activities.

It is safe to assume that most observers of organizational health would opt for neither of these positions. If the choice is between a bitter and protracted strike and the planned introduction of preventive consultation, the school board should certainly consider involvement of the work force in the decision making process. The selection of a chief negotiator who believes in the value of the humane environment and the fulfillment of human needs would be a significant move in this direction.

## Chapter 9

# STRATEGIES OF SUCCESSFUL SCHOOL NEGOTIATIONS: A MANAGEMENT APPROACH*

By Dr. Lewis T. Kohler, RSBA and Dr. Frederick W. Hill, RSBO, RSBA

School negotiations is a process for establishing working agreements or contracts and for channeling and resolving conflicts between school district management and its employees. Many believe that it is an effective means for meeting both school district needs and the human needs of district employees. The process of negotiations involves at least two parties--the school district and the employee bargaining unit. It includes making proposals and counterproposals; presenting data and arguments for and against proposals; and compromising to reach an agreement which is reasonably acceptable to both parties--and, hopefully, their constituents. At present, there is increasing interest and concern that a third party is now involved as far as public school districts are concerned. That third party is the general public which must pay the bill, and whose children must be educated under the terms and conditions as negotiated. School negotiations, or collective bargaining, will not solve all school district-employee problems and concerns.

It is claimed that public sector negotiations is somewhat different than private sector collective bargaining, although veterans of both types see less and less difference between them. Much has been said about public sector negotiations. Most authorities agree that the process is a fluid and evolving one which places a high premium on ingenuity, patience and flexibility on the part of members of a school district's negotiating team.

As a result of evolving public policy arising from federal and state laws governing private and public employment, labor relations in public school districts have changed drastically in recent years, and especially in the past two decades. Personnel policies, once administered unilaterally by Boards of Education, have been changed by laws in many states. Personnel negotiations with public employees, once prohibited, are now frequently mandated, thus leading to bilateral negotiations between school districts and organized teachers and other employee groups. The scope of this school district collective bargaining is sometimes limited to personnel policies, practices and working conditions. However, in an increasing number of public school jurisdictions, bilateral negotiations also may be concerned with many matters in addition to wages, hours, working conditions and fringe benefits. Employees desire an increasing voice in policy decisions of a broader nature.

Where school negotiations exist, they can drastically limit the school administrator's right to unilaterally determine the conditions of employment, while making more opportunities for teachers and other school employees to have input into decisions affecting their work. Believers in collective bargaining assume that such mutually determined working conditions, salary schedules and related decisions will generate greater support for the program of the school district and increased morale than might be otherwise generated by a unilateral decision-making process. Because the major goal of the collective bargaining process is to establish agreements which reconcile the diverse interests and needs of a school district and the human needs of its teachers and other employees, it is reasonable to believe that more broadly based agreements will be more acceptable, and, therefore more productive.

While some local educational agencies have accepted bilateralism as a modern approach to determining and managing personnel policies, procedures, salary schedules and working conditions some other school administrations and governing boards believe that poor negotiations performance can lead to contracts which will prove extremely costly to the school district and the public, especially if these agreements result in severe limitations of administrative prerogatives and the flexibility necessary for effective and efficient school operations and good costs/benefits relationships.

School administrators must learn that sound school negotiations require and are the end result of adequate preparation. The most skillful negotiator is of little value to a school district without diligent preparation by the district's staff to provide the necessary data required for back-up purposes. Adequate school negotiations take time. The time must be made available unless a district's administrators are prepared to face the consequences of poor preparation which probably will result in a bad agreement.

## The School District's Negotiating Team

The first step in preparing for actual negotiations is to plan, develop and select members of the negotiations staff to serve as the school district's negotiating team. A team spokesman should be designated. Delegation of authority to act must be activated along clear and distinct lines. The first act of the "team" should be to review district personnel policies, philosophies, practices, grievances filed by its teachers and other employees and its staff relations policy. Principals and other site administrators should be key sources of data relating to recommended or necessary changes in existing contracts. A review of other school district contracts and written union agreements, union newspapers, convention resolutions and various types of reports can provide important suggestions to the school team.

The school team should anticipate union demands and objectives. The "team" should develop its own objectives and proposals which the school district requires. These should be reviewed with the district's administration and school board prior to actual negotiating sessions. Data to support the district's positions, proposals and counterproposals must be collected, analyzed and systematized. Enough of such data should be generated throughout the school district so it relates to all specifics of the district's proposals and counterproposals and the anticipated proposals of the union.

Administrative team members, collectively and individually, must review and study all data and past practices of the district. The negotiating strategy needs to be determined and finalized. Strategy may be defined as the procedures to be used to achieve the overall goals and objectives the school district desires to achieve. When this strategy is determined and approved by the governing board, the school negotiating team must attempt to use appropriate techniques and tactics needed to attain these goals and objectives.

It is important to mention here that the school district's negotiating team must speak as one voice. A single individual, either a top school administrator or a professional negotiator, must be the spokesman and do the primary and actual negotiating. Working out details within main categories of an agreement may sometimes be delegated. Any disagreement between negotiating team members must be handled privately and not in the actual negotiating sessions.

Some guidelines are as follow:

1) Select team members who understand the working conditions of the entire school district, have empathy with others, skill and experience in school negotiations, and the ability to examine every detail and concern in the development of an agreement.

2) The members of a district's negotiating team must:

    a) Maintain a positive school negotiating attitude; be good listeners and persuaders and exercise sound judgement.

    b) Remember that school negotiations is a two-way path, and each side can offer to "trade" items to get what it wants.

    c) Remember that even though they are negotiating in good faith, they can reject any and all union demands.

    d) Understand that the personnel bargaining team is a political organization and, on occasion, must "save face".

    e) Be sure not to relinquish important rights of the school district.

    f) Negotiate from the current year's situation and the school district's own demands and proposals.

    g) Never relinquish control of its objectives to any negotiating session.

    h) Never neglect to seriously consider what any point of agreement will mean to the district and its community.

i) Never assume that what is clear and logical to see as top school administrator is perfectly logical to a union leader and member, and vice versa.

j) Remember that the most desirable end result of school negotiating sessions is a mutually satisfactory written agreement which both sides can live with for the period of the agreement.

### UNSOUND NEGOTIATIONS ATTITUDES
### TO BE AVOIDED

1) "Let's get it over with, give them what they want."
2) "We're right and we won't budge."
3) "Better make a trade."
4) "Frankly, I am bewildered and confused."
5) "Those people! never again."
6) "Let's split down the middle."
7) "Did you hear what ...... offered?"

## Starting Actual School Negotiating Sessions

Before school negotiating sessions are started, the district's negotiation team and the personnel bargainers must develop basic rules for the conduct of the sessions.

Usually, the best first step in starting negotiations is for each side to submit its list of demands to the other party. Administration's proposals are submitted only to the agency which has been certified and designated as the "bargaining unit" of the employee group. This is particularly important when several conflicting agents claim to represent a particular employee group.

When union demands are received, the school negotiating team must analyze them thoroughly. Such questions as how much will it cost the school district and taxpayers to implement the demands and what legal and budgetary effects will the union's demands have on the district's long-term and short-term responsibility to carry out its functions must be considered. In preparing a response to the union demands, the district's negotiating team must consider why the union made the proposal and what arguments the union negotiators will use to support their demands. From the answers to such questions, the school district officials may determine: just what the union will be willing to "lose ground" on; which demands have priority; and, what are the underlying problems in all union demands. All bargaining units may use the "laundry list" technique. The skilled negotiator must discern those demands which are "real" and those which are primarily submitted purely as "ammunition" for future disclaimer. By asking for too much, frequently they hope to bargain to an acceptable and realistic level of benefits.

At the first session at the table, each side should submit its demands. Usually the employee group is requested to explain each of its demands and school district officials will ask clarifying type questions. At the second session, school district officials will explain their proposals. After these two segments have been completed, usually at the third session, the two sides start to actively participate in negotiating sessions. Administration should make available a suitable room with conference-type tables, either for joint occupancy of both parties, or separate tables and sufficient chairs for negotiating team members and selected, approved observers and resource personnel, if such are to be admitted or used by either party.

A complete record should be kept of all proceedings. School district officials should take their own minutes. Generally, taping should not be permitted, unless both sides agree in advance on how and when such records may be used. The administration's negotiating team must make it very clear that all points of agreement are tentative until the final and complete agreement is accepted by official action of both the school district and the bargaining unit. Formal ratification procedures procedures and time span allowed should be agreed upon by both parties, in advance.

One of the "ground rules" which must be agreed upon is that when a tentative agreement on one item is reached, it will be written down, dated and initialed by both sides pending final approval of the complete contract.

## Understanding School Negotiating Dynamics

In school negotiations, the parties are not necessarily "equal" even though procedural equality is sometimes presumed, or even mandated by law.

Many factors affect the final negotiation's result. Important factors are: local and national economic conditions; organizational leadership; philosophy and personalities of individual school board members or negotiators; community environment; local and state political climate; the time existing contracts expire; employment conditions of the school district; amount of union support by its members; availability and extent of assistance to local union or local districts from state and national groups; and skill and preparation of the actual negotiating team and its chief spokesman. Many times one or both parties come to the table with "model agreements" which are generated outside the district and which may or may not be relevant to the local scene.

The obligation to negotiate in good faith under state laws does not require a school district to agree to every proposal and demand made by a union, or vice versa. In fact, "good faith negotiations" sometimes does not even require that a written agreement be executed. Even though the two parties are procedurally equal at the table, the presumed negotiating power of each is a major factor in their relationship to each other. Negotiating power may be defined as the ability and leadership of one party to force changes in another party's position which probably wouldn't be made if free choice was exercised. Pressure techniques are means of exerting negotiating power at the table.

Even though a strike threat and actual strikes (most controversial in public sectors) are known to be useful tools of union negotiating power on the part of labor, there are others which school districts must recognize as effective factors. Political pressure, skill and wide negotiating experience, public opinion and psychological elements are also important factors of negotiating power. Involvement of pupils and parents and articulate community groups are frequently-used techniques.

Other effective union negotiating power sources are sanctions, slowdowns, demonstrations, picketing, refusal to participate in coaching and other extracurricular assignments, working strictly by the rule book and the recognition of good results of political actions by the public school teachers and other employees. Employee groups have become quite adept at securing, by legislation at the state level, certain benefits they cannot achieve at the local bargaining table.

An understanding of negotiating power parameters is of great importance. Such power can be used both destructively and constructively by either party. Perceptions of negotiation power are probably more important than the power itself. Sometimes one of the parties may think it has the power and in reality does not possess it, or to its dismay, may also find out it does not really have as must as it thought it possessed. For example, the school district's board of trustees will act one way if they believe the bargaining unit has the support of its membership when it threatens to close the schools with a strike, and quite another way if the Board knows or believes that the membership is not truly in support of the union leaders' demand for a strike against the district. Similarly, personnel groups may act in various ways, depending upon what they believe the Board will do under certain circumstances. These considerations indicate that the district's negotiating team must seriously consider the dynamics of the bargaining unit with which it negotiates. It should consider such factors as leadership, financial resources, morale or membership, climate of community, union's attitudes toward negotiation and settlement histories in adjacent or comparable communities. If a union has a full-time paid professional staff, it can have a far different thrust than a union with a full-time teacher as its leader. The teacher-leader will be more concerned with school district issues, while the professional leader may be more concerned with state and national organizational concerns and issues. Bargaining units tend to desire to discuss specific grievances and cases at the initial negotiation sessions. Such discussions should be permitted by the school district's negotiation team only where they are germane to particular discussions of specific contract wording or clause revisions.

## Negotiating Power Tactics

Successful negotiating requires the recognition that:

1) Debates on vague or ephemeral philosophical issues should be generally avoided, and concentration should be on specifics.

2) School negotiating is not a "necessary evil", but a way to strengthen relationships between district needs and human needs and to provide a forum for bilateral determination of matters of mutual concern.

3) The process is not a trial by combat; it is an art, and not a science. It is a drama without a predictable outcome, but it can be directed by astute negotiations.

4) Sessions should be held in neutral locations, unless both sides agree, with costs shared equally.

5) School negotiations should not be conducted against the clock or calendar. The taxpayer and the school district can gain little but can lose much from lengthy hours at school negotiating sessions and last-minute emergency sessions.

6) All demands must be presented either at the first negotiating session, or at agreed upon times. All demands, both minor and major, should be expressed in writing, and with related issues grouped.

7) Competent advisors at the school negotiating table are an essential strength of the school district negotiating team.

8) Authority to make binding commitments within defined limits must be possessed by the chief spokesman of each team, and especially the chief spokesman of a school district's negotiating team.

9) Strike tensions and threats should not be allowed to affect the nature of the actual negotiating process.

Early in the preparation of the negotiating process, the school district must decide what and how much it is prepared to offer and what and how muct it will demand. An overall, complete package must be prepared. Individual items cannot be negotiated without relationship to the entire package. The total administration and fiscal situation must be considered.

Both sides (and especially the employees' bargaining unit) usually demand more than they expect to obtain and school district normally offer less than they will settle on at the final negotiating period. Productive school negotiations will never be achieved unless both parties truly believe that the other is practicing good faith negotiations. Agreements, even tentative ones, never come easily and this is when the give-and-take of the school negotiating process actually takes place.

Timing is of utmost importance and must be done within legally prescribed benchmarks such as budget referenda and tax-setting. Concessions from the school district officials are usually of political necessity for the employee bargaining unit. Even the appearance of refusing to concede by a school district opens the door to continued hostility, or sometimes may offer a labor leader a chance to "perform" for his constituency. School district officials must learn to anticipate and understand the political and organizational stresses of the bargaining unit. A carefully arranged set of priority items should be established early in the preliminary negotiating stages. The school district's negotiating team should have a sound understanding of which items are in the mandatory category and which can be "traded off", for what and how much, from the governing board's point of view. The crucial points are not the individual items but the overall total agreement/school district package. Successful school negotiations require a vast amount of insight into priorities, possibilities, opportunities and school district objectives. Staff relations continue indefinitely even though a contract runs out. In school negotiations, the future is always around the corner. This factor requires a different school negotiations strategy and approach. Some pointers are noted below:

1) A district's proposals should reflect a relatively balanced input from all involved groups within the organization.

2) School negotiations should be viewed as an educational process. Therefore, a district's team should explain the district's positions logically, and probe the union to fully comprehend the rationale behind its proposals.

3) A businesslike approach at the negotiating table will result in more effective negotiations.

4) District officials must understand that school negotiations involves give-and-take.

5) School negotiations has three stages from each party's point of view. From the district' point of view, these are: what the school district asks for; what the school district wants; and, what the school district is going to obtain. Conversely, from the union's perspective, these are: what the union wants; what the school district is willing to let the union have; and what the union will take to settle.

6) Mediation, arbitration, and fact-finding offer no magic solutions. Third-party assistance will only be of value in direct proportion to the parties' cooperation and understanding of the process

themselves. In a sense, third-party intervention is a sign of failure by the primary parties, and sometimes its primary value is as a "face saver" for the primary parties.

## Underlying Principles for Successful School District Negotiators

Some underlying principles to be understood by individual members of a district's negotiating team and its chief spokesperson are:

1) Be yourself. Reflect personal and professional integrity. Use an approach which is consistent with experience, personal attitudes and background. Emotions can be used effectively at appropriate times. Maintain a high degree of good manners. Learn to disagree without being disagreeable.

2) Assume a positive school negotiating attitude. Always negotiate for what the school district wants. rather than negotiating against union demands.

3) Be ethical. Avoid deception, craftiness or distortion of facts and figures. Expect a high degree of ethics from the union leadership and its negotiator.

4) Maintain the district's negotiating team's morale and discipline. Team members must understand that the chief spokesman will speak for the school district unless prior specific arrangement is made for administrative team members to speak on selected issues or make appropriate observations--when called upon to do so by the school district spokesman. Each team member must be alert, watchful and a good listener at all times. Communications between members of a school district's negotiating team should be at coffee breaks, at caucuses and preferably in writing (rarely verbal!) at the negotiating table.

5) Know the bargaining unit's chief negotiator and team members. A complete biographical sketch and picture of each union team member should be available to each district team member who may be unfamiliar with them, prior to actual negotiations. This information should include: work history; union leadership history; grievance history; and, personal and local interest areas.

   Learn to speak through the union negotiator to the members of the union team and the union membership. Build and sell the school district package and its philosophy in such a way that the union team can sell it to its membership. Stating excellent points in a grand oratory manner is not good enough. The union spokesperson/team must hear, thoroughly understand and be persuaded by verbal presentations--even though the union itself doesn't necessarily accept or agree with the view.

## SAFEGUARDS ** DO'S AND DONT'S

DO have objectives (written policies to govern your actions).

DO have a general knowledge of the laws under which you are bargaining.

DO always plan for the worst (conciliation, dispute, strike) from the very beginning, and conduct yourself accordingly.

DO name a bargaining committee of the board, then use the team approach with an indexed bargaining book.

DO name to your bargaining committee only people who have functions to perform; new board members should be named as observers.

DO maintain adequate records of proceedings at bargaining meetings.

DO analyze proposals to determine present and future costs, as well as to discover hidden cost items.

DO remember that bargaining is a two-way street, and that the federation or union will often trade to get what it wants.

DO make effective use of the counter proposal to obtain revisions or modifications of your agreement that will produce greater efficiency.

DON'T have full authority to sign an agreement - take it back to the board or branch.

DON'T relinquish control of the negotiation meeting.

DON'T ask "How much" -- ask if they can justify what they are getting now.

DON'T believe anything that they cannot prove satisfactorily.

DON'T downgrade the teacher in your discussions at the bargaining table.

DON'T "horsetrade" at the bargaining table.

DON'T bargain for what the teacher does at night.

DON'T deal person to person informally outside the meetings; keep the policy group in the discussions.

DON'T offer increases when the other side is making unreasonable demands; it is better to be able to accept a reasonable request.

DON'T make irrevocable agreements by item; make only tentative commitments until complete agreement has been reached.

DON'T relinquish important board rights.

## SAFEGUARDS ** DO'S AND DONT'S

DO always be truthful at the bargaining table.

DO keep discussions at a factual level, be realistic, and justify requests.

DO base discussions and decisions on the average teachers--not only on the superior, dedicated teachers.

DO leave wages to the last; consider other matters first.

DO remember that you have a duty to bargain but that you are free to disagree and reject any proposal.

DO stick by your position with courage when you feel certain that you are fair and right.

DO make use of Associations and OSTC services and advice throughout negotiations.

DO estimate the effects that your decisions will have on other boards.

DO keep your Association, the OSTC, and neighbouring districts informed, together with document.

DON'T agree to something that is subject to mutual consent. (They often give to teachers authority not originally intended, and a veto over board actions).

DON'T agree to something that might be recognized later as a "give-away" or "sleeper" clause.

DON'T give anything because it does not affect you.

DON'T give too much in any area because it does not affect you much.

DON'T make an offer in expectation that it will be readily accepted--learn to expect further bargaining.

DON'T make a "final" offer unless you really mean it. and are prepared to stand by it even through conciliation and arbitration.

DON'T offer to make a concession, unless the offer is contingent upon reaching a complete agreement.

DON'T interrupt the teachers' presentation of a proposal no matter what you think of it then. On reflection you may have learned something useful.

*ONTARIO SCHOOL TRUSTEES' COUNCIL

6) Be courageous. Stick to the school district's position when you know it is right and fair. Be able to act as an advocate or defender. Do not be disagreeable simply because you disagree.

7) Maintain control of negotiations sessions. Avoid permitting the bargaining unit to take control by constant referral to union proposals and demands. In other words, don't negotiate solely on union demands. Insist upon an agenda for each session and agree upon definite opening and closing times.

8) Place the burden of proof on the union negotiating team and the union negotiator. Agree upon facts, or basic data, and share data with both sides.

9) Ask questions that cannot be answered with a simple "no" or "yes". Join in the fact-finding, if there be disagreement on basic assumptions.

10) Keep the negotiations moving. Make sure that each negotiating session keeps moving and to the point of issue. If a stalemate is reached, go to another issue. Come back to the original topic later.

11) Be careful about contract language. Be sure to analyze, digest, review and study suggested contract language even before giving tentative agreement, to avoid "sleepers" and giveaways, or unclear language that can cause troubles later.

## School District Negotiating Procedures

Some guidelines on procedural matters of importance to the school district's negotiating team are these:

1) Don't become "hung-up" by procedural mechanics. These are nothing more than aids to orderly progress and process. They do, however, provide "checks" against unnecessary haste and oversight.

2) During opening school negotiations sessions remember that both sides come to the table as equal participants. Greet the union negotiating team with courtesy. Introduce each member of the respective teams to each other. Refreshments can be provided to set a good emotional tone to the sessions. At the first negotiating session, discuss and jointly decide on an overall calendar or target dates, meeting time schedules, length of meeting, paid time for district employees on the union negotiating team, publicity procedures, rules about visitors, resource people, allowable visitors or observers and other matters of procedural concern. Final review and ratification procedures should also be established. It is important to understand how and when the negotiating process is formally ended. Next, review the union package of demands sequentially point-by-point. The school negotiating team should avoid any comments which may indicate the

district's position on any of the items--even if the union already has a good idea of what that position is anyway. Explore the problem which may have been the foundation for the demands and the intent and scope of the union package. Ask approgriate questions including the routine "Who?" "What?" "Why?" "When?" "Where?" after hearing proposals. Even when the union demands are way out-of-line with reality, the school district's chief spokesman should not over-react when questions are directed to the union negotiating team. Identification of, and attempting to solve problems should be the main goal of the school district's spokesman especially at the opening sessions.

## Mid-Point Negotiating Sessions

The school district should submit its response to each of the union's demands after the complete union package has been discussed. The complete school district package, administration/Board initiated, should be presented to the union negotiating team and explained.

The administration's response can be in writing or orally, or a combination of both, especially in specific areas which it is willing to negotiate. Both sides must agree in principle before specific language of an agreement can be submitted and reviewed. Either or both sides may with to keep minutes, and a procedure for reporting or non-reporting should be agreed upon.

Timing is of utmost importance. One must exercise control and select the most advantageous and appropriate time to make an observation or proposal. Frequently, it may be wise to "drop" an issue, and return to it on a later date. "Obstacles" frequently dissolve with the passage of time, and the opportunity for deferred reflections.

As the number of issues are tentatively resolved, the two sides may feel the timing is right for tying up loose ends. Patience is of great importance for all members of the school negotiating team and, especially its spokesman.

"Non-economic items" must be seriously considered, since they sometimes prove more costly to the taxpayers in the long run than the so-called "economic items". When to submit/discuss economic proposals during a negotiating session is a matter of timing and sensitivity. Usually, economic items are considered after non-economic items are resolved, but there is not virtue in an ironclad order of priority. Some negotiators prefer to get the "easy" agreements nailed down first, and defer the hard problems until the "climate" of understanding has been established. Others prefer to tackle the hard nuts first, when they are fresh, and to leave the easier issues to a later time.

Some pointers are in order:

1) Don't interrupt the presentation of the union's proposals.

2) Don't make commitments without deliberation.

3) Remember that the ability to operate a school district effectively and efficiently is the most important consideration, and that mutual consent provisions award to the union authority which was not originally given to them, and a future veto over actions of school administration. Unless there is a continuance of leadership on both sides, with mutual respect and integrite, this may be too high a price to pay for labor peace.

4) Don't offer to make concessions, unless such an offer is contingent upon or contributes to reaching a complete agreement on other issues.

5) Don't overlook the need to keep abreast of what teachers and other school employees are thinking and how they are reacting while negotiations are moving forward.

6) Don't give away in one provision of an agreement what the district has carefully obtained and preserved during other contract negotiating sessions, unless such concession is intended as a deliberate move toward concensus.

7) Personalize the issues that are good and depersonalize the issues that are bad.

8) Make effective use of counterproposals.

## Final School Negotiating Sessions

Members of the school negotiating team should review language, intent and scope of each of its proposals, and check each proposal against existing provisions (if a previous contract exists in the district) to make sure that no new problems are created.

It is important that the school negotiating team remains ever alert during the final periods of negotiations. When both sides are weary, a rush toward agreement sometimes fosters slipshod acquiescence, which can lead to later problems.

The final sessions should thoroughly review and discuss the agreement reached, as well as the method of ratification and approval by the governing board and the union officials. Any retroactivity of the agreement should be thoroughly spelled out in detail. Assurances should be obtained from the union negotiating team and union leaders that they will recommend the agreement and will exert every pressure towerds ratification by the union membership.

## Strategies for Achieving Agreement at School Negotiating Sessions

There are a variety of strategies useful in achieving agreement at school negotiating sessions. Some are:

1) Assume acceptance of the school district's proposals. Always

assume and/or express confidence in the reasonableness of all district proposals.

2) Be gracious. Allow for "saving face." Creating resentment does not add to problem-solving. Being a bad winner over small victories may make it more difficult to reach final agreement.

3) Start negotiating sessions from areas of mutual agreement rather than dealing with controversial issues. Such a "start" will promote an environment in which disputed issues may be more easily resolved.

4) Be prepared! The school district's negotiating team should be prepared to explain any union demand or any district demand. However, it should be recognized that unions are capable of submitting their own demands, and explanations thereof, and that they will challenge administrative action through the grievance procedures. When they do, they will assume the burden of proving their case.

5) Don't plead. Instead explain, discuss each proposal and use all persuasion at your disposal. Demonstrate and demand respect and courtesy.

6) Cite a proposal's advantages. When advantages and benefits are substantial, the school negotiating team should use them as factors in support of the district's proposals.

7) Encourage problem-oriented discussions. Avoid personality-centered discussions, since a far more pleasant "setting" for reaching agreement is established to solve problems by using the problem-oriented approach. Objectivity is the key for a constructive relationship.

8) In dealing with demands and proposals, the district's negotiating team has the responsibility to give realistic consideration to union demands and proposals even though some appear to be unreasonable or unresolved. Such consideration of district proposals must also be afforded by the union negotiating team.

9) When possible, present a proposal with a generalized approach for its solution since this allows more freedom for negotiating with little arguments on language structure. In other words, an initial devotion to language in working up provisions in exact contract forms offers more problems than solutions--and may seriously hinder agreement.

10) When preparing the final written agreement, be sure it has been checked to make certain its clauses do not violate local, state and federal laws, statutes and higher regulations as well as school district policy, Board rules, administrative regulations and procedures. State that the terms of the final agreement become effective on the date the agreement is signed and ratified by the school district and the union membership, and is not retroactive

> to the date school negotiations began, unless specifically so negotiated. Ask for modifications or revisions of an agreement to give the school district greater efficiency. Be sure both sides have identical copies of the final wording, and in sufficient quantities to insure proper ratification by both sides.

Some of the strategies contributing to successful negotiations include: data collection before negotiating sessions begin; past practice identification and evaluation; selection and training of the district negotiating team; the identification of a district's chief spokesman; a thorough understanding of conditions in the school district' and an examination (mission nothing) in the forming of any written agreement. Recognition of the fact that there is no magic strategy for conducting school negotiations is vital. A spirit of good faith and respect, and integrity of position, with a willingness to share data, and a continuing record of discussions, available to both parties are essential. Within the framework of such considerations, a desirable, useful, and mutually acceptable agreement may be generated.

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## AN OVERVIEW OF CONTRACT ADMINISTRATION: A CHECKLIST

1) Contract Formulations

2) Contract Publication and Distribution

3) Contract "Education" and Interpretation

4) Contract Implementation

5) Contract Liaison Relationships

6) Contract Enforcement/Protection

7) Contract Evaluation and Modification

8) Contract Continuance/or Termination

-- Dr. Frederick W. Hill

## Chapter 10

# COSTING CONTRACT DEMANDS

By Dr. Blaine Smith

This chapter presents general guidelines to follow when attempting to determine the "real" cost of a contract. Specific examples are used to provide the reader with procedures that may be utilized when examining both classified and salaried employees.

This chapter also demonstrates that the salary is not the only significant item of economic impact in a contract settlement. Comp time, paid holidays, health insurance and so on are some of the more obvious costs discussed. This chapter thoroughly documents the statement that a thorough and complete analysis of all contract items both before and during negotiations is necessary to eliminate any long-term devastative effect of economic concern.

Children often say to parents, "Why can't we go to the store? It doesn't cost anything to look!" How innocent the request, and the argument is persuasive. The simple request and supportive argument seem valid enough, but a closer examination of this simplified example would reveal that there are indeed some costs involved. Some of these costs are apparent, while others are subtle and hidden. For example, there are the more obvious costs of transportation and time. Other costs are less obvious and more difficult to describe. Such things as the displaying of goods and providing a well-lighted, temperature-controlled place for the goods to be shown represent expenses which are ultimately reflected in the end cost of the product.

While this chapter does not appropriately indicate the depth with which one must examine the items presented at the bargaining table, it does illustrate that care must be taken to examine each item for underlying or hidden costs.

It has been said many times by negotiating teams, "Let's try to seek argument on the non-monetary items first." It is this author's contention that these items are few and far between. The vast majority of non-salary items carry some costs. The very nature of contract demands suggests that they are intended for the betterment of the teacher's position, and for the most part, they cost money.

## Obvious Costs

A critical part of preparation for any management negotiating team is determination in advance of total amount of funds available and the parameters within which the funds may be distributed. It is necessary to then calculate the cost of a total package. In addition, each proposal should be evaluated individually for cost. All proposals have an economic value. Each has some advantage to the teachers or it would not be proposed. These advantages result in administrative costs, direct costs, indirect costs or the loss or services which have economic value. Each item must be considered seriously and should be evaluated fairly. The calculations must be able to stand public scrutiny and must be solid enough to be supported before a mediator. The evaluations of cost should, however, be made from the management's point of view.

Supporting evidence should be gathered to substantiate the cost figures established for each item. This information can be attained through thorough research of the literature and by seeking information from neighboring school districts and districts of comparable size across the nation. A data bank of cost information should be maintained and updated as is appropriate.

The largest cost item normally is salaries. The salary schedule should be calculated as presented by the teacher's organization, but other alternatives should be prepared to be used as counterproposals. The salary proposal should be examined for its impact on certain classes of employees such as providing more for beginners or more for career teachers. Usually, management will have established an amount of money available for salary and fringe benefits. The negotiating process involves the distribution of these funds in a way which can be agreed upon by both parties. Care must be taken to ensure that funds are distributed in such a way that district needs are met. If a district is in a growth or high turnover situation requiring that a large number of new teachers be added each year, the beginning salary must be kept at a level which is competitive with other comparable districts in the area. This measure will insure that the best quality employees can be attracted. If, on the other hand, the district is in a declining enrollment or small turnover situation and requires a small number of new employees, consideration might be given to distribution of funds more toward the career teacher.

Regardless of the method of distribution of the available resources, it is very important that data which is gathered reflects action of other districts in regard to salaries. This information should be used for comparisons only and should not be used to set guidelines for an invididual district. By the same token, teacher negotiators should not be permitted to use action of other districts as a bargaining lever in their argument, since one district may pay more but may have fewer benefits. This illustrates one of the major problems of comparing a school district to a neighboring one. The data may or may not be advantageous to the present position. Prior to negotiations a decision should be made concerning use of this type of comparative data. Once made, the decision must be applied to both parties.

It is also important that a means be devised by which the negotiating team can quickly calculate counter offers of salary considerations. If a district is using a ratio salary schedule, a salary distribution should be calculated and a district multiplier established so that total cost can be calculated for any change in the base figure. A similar calculation should be made to establish the cost of increments. Because the turnover in employees would effect the distribution table, this calculation will not be totally accurate, but will be accurate enough for discussion at the table. However, before a final agreement is reached and signed, an accurate calculation should be made. If a ratio salary schedule is not being used, a distribution of training and experience should be established to aid with rapid calculation of total cost for any salary proposal and fringe benefit package.

The total cost of a salary package must include the cost of fringe benefits both in terms of immediate costs and future commitments. Each fringe benefit should be evaluated separately in terms of its initial requirements and implication for future costs: Many times agreement can be reached by trade-offs between salary considerations and fringe benefits.

A common fringe benefit request involves health and dental insurance. Most school districts have agreed to provide medical insurance benefits and many are now moving toward some form of dental care insurance. Even though these are worthy benefits to consider, it should be kept in mind that the cost of these programs has risen rapidly in past years and will probably continue to rise at an accelerated rate in the future. A commitment to provide full coverage must be made with the realization that future years may bring larger costs. Perhsps the best approach would be to agree to a dollar amount to be used toward the purchase of insurance coverage. This would permit the district in future contract years to have the option of providing full payment of increased costs for health and/or dental coverage or a portion there of depending upon the availability of funds.

An additional example of direct costs that must be considered with classified staff is paid holidays. If a district is faced with a request to institute paid holidays at Thanksgiving, Christmas and Easter, the following cost factors should be considered:

1) Are school activities being carried on which would require an individual to work above the normal 40-hour week?

2) Although a district may not be giving paid holidays, is the hourly rate high enough to compensate for this? Some employers give paid holidays but pay lower hourly rates and base the total salary calculation on an extended work year.

As previously mentioned, any cost analysis must attempt to find a fixed, not variable, cost to the school district. The method of salary payment is an example. Suppose the present method of payment is monthly and the union has requested a bi-weekly method of payment and a "payoff of accrued summer salaries". While this appears to be a simple, not costly request, the following questions should be considered.

1) Does cash flow cover end of the year payments without borrowing money on anticipated income?

2) How much interest would be lost if everyone withdrew his summer pay in June?

3) How much clerical and/or computer time will it take to produce two payrolls per month instead of one?

While this list is not complete, it is illustrative of the types of analysis that must be done to adequately estimate the cost of any proposal.

Process Costs

There are other costs related to the negotiation of a contract which are not as obvious as those connected with salaries and fringe benefits. Some of these may be referred to as "process costs". These costs may be grouped into direct personnel costs, logistical costs, support costs and the cost of shared authority.

Direct personnel costs refers to salary and related costs of management's negotiating, which are determined by the amount of time allocated for the purpose. These costs include services of budget officers, school district attorneys, business managers, information service personnel and clerical assistants who aide with the negotiating process, preparation of the team and gathering of necessary data. These costs become more apparent when time is calculated for staff members spent in gathering information for a data bank. In addition to administrator's time, clerical time is required to write letters of inquiry. The received information then must be reviewed, organized and prepared in usable form.

Indirect personnel costs are those which are required to provide training for those involved with bargaining. However, these costs are a very good investment. The better the team is trained, the better are the chances of achieving an acceptable agreement at the negotiating table.

The contract may also require certain conditions, such as evaluations, which can represent expenses when implemented. Items involving teacher evaluationa may include provisions to use teams of peers to make the evaluation. This could involve several expenses including substitutes for the evaluators or extra pay for their service.

The logistical costs are those concerned with the collection of data, establishment of comparative cost information, building and maintaining personnel files, printing and providing meeting space. Often associations will request that the place selected for a negotiating session be a neutral site. This will usually require a rental arrangement and its cost must be shared by both parties.

Support costs may or may not be included in the contract. If they are, such things are district-provided clerical assistance, phone service, office space, professional libraries and released time for teacher staff members or negotiators or for the association could be included.

The cost of shared authority may be more indirect and less defined, but sometimes represents a real financial responsibility to a school district. Some costs in this category might include a provision for faculty participation in certain personnel decisions such as employment, evaluation or dismissal. These involvements can and often do require released time for those who participate and this results in costs to the district.

At this point it may be well to consider the implications of hiring a professional negotiator versus training an existing member of the staff to serve as chief spokesman. A recommendation along this line is somewhat difficult to make and to substantiate. The only criteria for evaluation would be the results achieved at the table, and, since both cannot negotiate the same contract with the same time, a comparison would not be possible. It has been generally observed that the trained professional negotiator seems to stay more attuned to changing conditions in the field and can be less emotionally involved with the teacher's group since he does not work with teachers on a daily basis. The employee's negotiator will undoubtedly be a fully trained professional either at the table or behind the scenes, whichever is permitted under the law. Each district must assume the responsibility of assigning to the table the most highly trained personnel to insure a fair and equitable settlement.

## Intangible Costs

Many times the climate, or atmosphere, at the table has important implications in regard to the cost of the contract, immediately and in the future. If an attitude of mutual trust and respect prevails, a contract agreement will usually reflect a settlement which is satisfactory to management. On the other hand, if a feeling of distrust and animosity exists, a contract settlement may be more difficult to achieve. The latter kind of attitude may have greater implications for future negotiations than current conditions, because if hostility prevails, the next year's contract demands probably will be much more severe and less and less easily resolved.

Other factors play an important role in determining the total cost of reaching agreement on a contract. Public opinion is a vital force to establishing the parameters within which each team must operate. If the public generally has a high regard for the school system and has exhibited this feeling by approving all financial support items which are submitted, the negotiating teams may assume their support for a settlement which favors the teachers. However, if the pattern of public support has been questionable, the management team may feel that a hard line, austere approach would be the attitude acceptable to the public. A careful assessment should also be made as to the kind of community and the attitude which exists toward labor unions. If it is an industrialized area which has had organized labor over a long period of time, a more receptive attitude will probably exist toward organized teacher groups. However, if the community is one which has had little exposure to organized labor, the prevailing attitude might be quite different and less tolerant of excessive demands made by either side.

The attitude of the Board of Education is a critical factor in the kind of agreements which can be achieved at the bargaining table. Prior to negotiations, it is critical for management to determine from the Board the parameters within which the negotiating team will be allowed to operate. A history of past performance is essential to establishing the limits and understanding the posture of the Board if severe conflicts arise. Some Boards have very clear-cut positions relative to teacher salaries and fringe benefits. The position may be anywhere from "give them nothing and make it retroactive" to "give them everything they seek", but nonetheless, their position is clearly known. Other Boards may wish to assume that the superintendent will determine what the district can afford and be willing to support proposals from his office. Still other Boards seem to vacillate and will tend to yield when "push comes to shove". Whatever the behavior of the Board is likely to be, it is important that its position be understood prior to negotiation.

The costs of failing to reach settlement at the table must be examined and weighed carefully. While mediation/fact-finding are separate and definable, the goal of the employer is similar: to convince a third party that its offer is reasonable, adequate and all that the district can afford. Mediation and fact-finding have no magic formulas. The school manager who knows how to efficiently utilize these processes can produce satisfactory results. He must understand and have confidence in the process as well as the individual mediators and fact finders who implement them.

The group that does the best job of convincing usually comes out ahead. If is at this point that cost analysis and historical perspective are particularly relevant. If the district can show that over several years it has increased its salaries to teachers, and that during negotiations it has moved from its initial offer toward the initial demand, credibility or good faith bargaining has occurred. Income, expenditures, local vs. state effort and department service should all be considered when developing arguments. Be careful of one thins -- facts and figures must be accurate. Can the employee organization either cast suspicion on district figures or use them to its advantage? If the answer if "yes" to either section -- forget that argument and go on to another, but be ready to develop a counter argument on those questionable figures.

Can a district "make" money if teachers go on strike? There may not be any definitive answer to this question if one considers all of the costs. For example, if strikes will not occur until September, look at the following points that must be considered when not enough teachers are present to operate school plants and classrooms:

1) Certain state Education Departments have required that all local school districts must have a minimum of student days which must be considered.

2) Will teacher in-service days be rescheduled and made up?

3) Will careteria and maintenance staff be laid off? How will this affect your unemployment compensation payment? If they continue to work, will days have to be added to their work year?

4) Are there problems with transportation contracts?

5) What is the cost-effect of extending interscholastic and/or intramural schedules?

6) If teacher in-service days are not made up, will the district gain monies because of reduced yearly payroll?

7) How will a strike, in conjunction with any proposed settlement, affect reimbursement?

8) Can the district demonstrate that a strike of any duration will affect its subsidy from the state?

The impasse procedure can be, and often is, quite expensive. However, these expenses can sometimes be minimal compared to the cost of meeting employee demands. A strike can be much more expensive in terms of a direct monetary loss and a possible loss of community support. Impasse and strike may have implications for future negotiations. If impasse items are not ruled favorable toward employees, they may be reluctant in the future to refuse settlement at the table. If, however, the reverse is true, the employees' group may wish to declare impasse on all items on which agreement is not reached immediately. The future implications of failing to reach agreement at the table must be evaluated carefully. If is possible to "win the battle, but lose the war."

The following examples are presented as a model for use to determine the cost of fringe benefits. Similar information is used in the examples so that the total annual cost may be determined.

1) Method for computing total annual cost of six paid holidays. If a facility employs 400 people with an average hourly rate of $5.00, has six paid holidays, the total cost is determined by:

Number of employees X AHR (average hourly rate) X hours off on holidays

400 employees X $5.00 X 48 hours = $96,000,00 Annual Cost

The same basic formula is used to determine the cost of each additional holiday that may be added.

Although paid vacations are often a minor point in the overall negotiations package, consider that the point may be minor but the overall cost may be high. Using the same figures, assume that all employees are awarded two weeks vacation. The first step in calculating the cost is:

400 employees X $5.00 X 80 hours (2-weeks paid vacation) =
$160,000.00

Should it be necessary to hire substitute employees that cost should also be included by utilizing the following calculation:

Number of replacement X hours X rate = Substitute Cost

Both the substitute cost and the actual cost of the paid vacation should be added together when determining the total cost of the vacation package.

2) Should a proposal be presented for a 15 minute rest or a planning period, the following formula can be utilized:

400 employees X $5.00 X 62.5 hours = $125,000.00

The figure of 62.5 is found by multiplying the time period by 250 (the average number of days worked, and dividing by 60 minutes). These figures would vary with the unique number of work days at each site. Similar procedures should be considered when examining the fringe benefit package.

In summary, the costs of bargaining are many and varied. The effects of implementing the provisions of a negotiated contract can be felt immediately, but more often than not the long-term effects will be most devastating. A good rule to follow is "to be forewarned is to be forearmed". Thorough and complete preparation must be made prior to beginning the negotiations process and continued research and costing must be carried on throughout the bargaining period.

## Chapter 11

# CONFLICTS BETWEEN PARTIES AT THE TABLE

By Dr. John L. Grogan

The goal of much of the legislation which provides for fact-finding, mediation, arbitration and a grievance procedure is to promote an orderly method to resolve conflicts between public employers and their employees. While one may argue the strengths, weaknesses and in some cases, the reasonableness of these procedures, the goal is a worthy one.

This chapter begins with several definitions of the processes of impasse resolution and what constitutes an unfair labor practice. These are provided as a reference for reading the succeeding material in the chapter. Three of the processes involve the utilization of a neutral party to assist management and labor resolve various types of disputes. Grievance procedures, the final process discussed, is the only area where the participants are limited to the employer and employee.

It must be remembered that none of these processes is applicable to all states and provinces. In researching this chapter, the writer has found that there are many unique variations on the utilization of the basic concepts of mediation, fact-finding and arbitration. Whether the goal of orderly resolution of employer/employee conflicts has been achieved, has yet to be determined.

First, here are some basic definitions:

Mediation -- a third party (one or more persons); usually the Federal Mediation and Conciliation Service; at the request of either party or on own proferring of services; seeks to persuade bargaining parties to reach agreement.

Fact-Finding -- a third party (one or more persons); examines cause and status of impasse through oral and/or written presentation and makes finding of facts; may include recommendations; findings may be made public. (Third-party fact-finding may be used only authorized or directed by impasse panel.)

Arbitration -- a terminal procedure alternative to or following mediation and/or fact-finding whereby a third party (one or more persons) selected jointly by the parties examines the facts of the impasse and makes a decision for resolution; may be advisory or binding. (May be used only when authorized or directed by impasse panel.)

Figure I delineates impasse resolution even further.

The following lists are offered to enable the reader to understand just what constitutes an unfair labor practice from both "sides of the fence", management and labor organization.

## Criterion for District Management Unfair Labor Practices

- To interfere with, restrain, coerce district employees with respect to non-membership or membership in a labor organization.
- To encourage or discourage membership.
- To sponsor or control the labor organization.
- To discriminate because of district employee's filing of a complaint.
- To refuse to recognize the representative of the employees in the district.
- To refuse to bargain in good faith.

## Criterion for Labor Organization Unfair Labor Practices

- To interfere with, restrain, coerce employees with respect to labor organization membership, or non-membership.
- To force district management to interfere.
- To take action interfering with work of district employees.
- To engage in or fail to prevent or stop work stoppage or strike.
- To discriminate in representation because of race, sex, color, creed, national origin or labor organization membership.
- To refuse to bargain in good faith.

## FIGURE I

## TYPES OF IMPASSE RESOLUTION

| | MEDIATION | FACT-FINDING | ARBITRATION |
|---|---|---|---|
| Process | Intervention by Federal Mediation and Conciliation Service or other appropriate third party at request of negotiating parties or on own proferring of services | A procedure for compelling settlement, frequently a final alternative to arbitration. | A terminal procedure, an alternative to or following fact-finding. |
| Subject Matter | Terms of new agreement being negotiated. | Terms of agreement being negotiated. | Terms of agreement being negotiated (also may be final step in grievance procedure) |
| Setting | Mediator tries to determine basis for agreement and to persuade parties to reach agreement. | Parties try to persuade fact-finder by arguments. | Parties try to persuade arbitrator by arguments (same as fact-finding) |
| Third-party | Mediator is a Federal Commissioner of Mediation and Conciliation or other third party | Fact-finder is a public employee or a private citizen selected by parties or by Federal Service Impasses Panel | Arbitrator is a public employee or a private citizen selected by parties or by Federal Service Impasses Panel. |
| Power Factor | Mediator is limited to persuasion and ability to find compromise. | Fact-finder may make recommendations for impasse resolution. | Arbitrator makes binding decision. |
| Publicity | Confidential process with no public record kept. | Quasi-public process with recommendations recorded and reported. | Quasi-public process with decisions recorded and reported. |

Mediation is an integral part of the collective bargaining process. Mediation is the use of a neutral third party to work with the opposing parties to obtain agreement. The neutral party has no cloak of authority as does the fact-finder or the arbitrator. Mediation is based on the concept that with guidance, trust and the aid of a neutral observer, the parties can reach agreement. To provide the reader with some idea concerning the use of this procedure, a partial listing of states that utilize mediation is provided in Figure II.

Mediators must have a high degree of imparitality, integrity and objectivity. They must be able to see all sides of an issue and be able to propose alternatives that will be acceptable to both parties.

The Process -- While the introduction and use of mediation varies with statute, some general principles have developed since the concept was first introduced in the late 1800's. Mediation usually occurs after the parties have had an opportunity to engage in good faith bargaining. Most states require that the parties request the assistance of a mediator after a sufficient period of negotiations has occurred and an impasse is reached. Most mediation agencies will not intervene as long as the parties are making progress at the negotiating table. Mediators do not generally like to intervene too early and become a part of negotiations. Once a real impasse has been reached, what should management/labor expect from a mediator?

Once a mediator becomes actively involved in an impasse, he will generally chair meetings, schedule dates for future discussions and direct the time and issues being discussed. He will, generally, share the decisions on times and dates of meetings with the parties, but will control the flow of events during any schedules meeting.

Mediation is a private process. As previously mentioned, both sides must trust the mediator and explain true frustrations, concerns and limitations. The essence of mediation is deliberation, confidentiality and a willingness to explore new alternatives. Laws which require negotiations to be public, or parties that desire public exposure, will severely limit the effectiveness of mediation efforts.

The mediator may schedule joint or separate sessions. Depending upon the issue and the degree of crisis, the mediator may want to meet individually with the parties to explain positions and obtain frank explanations from each party. It is at this time each side is responsible to explain, clarify and convince the mediator that its position is reasonable and rational. It is also the time to listen to what the mediator is saying about the union requests. Management must keep in mind that the mediator is going to attempt to move both sides to agreement. Since he knows the true positions of each party, he can often cut through the charade of hard-nosed negotiations to obtain a reasonable settlement.

During combined meetings he will often introduce issues for discussion, provide leading statements for one side or the other to pursue, act as a buffer between hostile parties and generally guide the negotiations process toward an acceptable conclusion.

## FIGURE II

## USE OF MEDIATION PROCEDURE

| | | | Who initiates impasse procedure | | |
|---|---|---|---|---|---|
| | | Mediation. First step of impasse procedure | State initiates mediation on own | Parties themselves file impasse notification | Notes |
| Georgia | Fire | yes | After 30 days negotiations | | Mediation board (tripartite) used. Mediation Board conducts hearings and issues advisory recommendation. |
| Hawaii | Public Employees | yes | X | | |
| Idaho | Fire | no | After 30 days negotiation | | Fact-finding is only step. |
| Idaho | Teachers | yes | | X | |
| Indiana | State and Municipal | yes | X | X | |
| | Police and Fire | yes | X | | |
| Indiana | Teachers | yes | X | X | |
| Iowa | A.. emp. | yes | | X | Parties may agree on own impasse procedure, not necessarily utilizing mediation. Arbitration is available. |
| Kansas | Public | yes | X | X | Parties can include impasse procedure in agreement. |

(Figure II continues on page 132)

## FIGURE II

## USE OF MEDIATION PROCEDURE

| | | | Who initiates impasse procedure | | |
|---|---|---|---|---|---|
| | | Mediation. First step of impasse procedure | State initiates mediation on own | Parties themselves file impasse notification | Notes |
| Kentucky | Firemen | no | | X | Fact-finding is only step. |
| Maine | Municipal | yes | X | X | Standing panel of mediator. |
| | State | yes | X | X | |
| Alaska | Public Employees | yes | X | X | |
| | Teachers | yes | | X | Each party chooses 2 persons to serve on a Mediation Board. These 4 choose a fifth. The Board submits findings & recommendations after hearings. |
| Calif. | Public School Employees | yes | | X | Either party may declare impasse.Parties may include in their agreement procedures for interest arbitration. |
| Conn. | Municipal Employees | yes | | X | Fact-finding is 1st step if parties have not requested mediation within 50 days board shall appoint mediator. Fact-finder specifically empowered to mediate. |
| Delaware | Public Employees | yes | | X | No provision for fact-finding. |
| | Teachers | yes | | X | Tripartite mediation panel "shall be formed" if parties cannot agree on mediator. |

## FIGURE II

## USE OF MEDIATION PROCEDURE

Who initiates impasse procedure

| | | Mediation. First step of impasse procedure | State initiates mediation on own | Parties themselves file impasse notification | Notes |
|---|---|---|---|---|---|
| Florida | Public Employees | yes | | X (suasponte) | Agency appoints Special Master who performs advisory arbitration if parties fail to appt. mediator. Legislative hearing after fact-finding. |
| Maryland | Public School | yes | | X | Mediation is only step provided. Impasse panel chairman mediates and impasse panel factfinds. |
| | Municipal | yes | | X | |
| Mass. | Public | yes | | X | Arbitration is voluntary. |
| | Fire and Police | yes | | X | Arbitration is compulsary. |
| Mich. | Municipal | yes | | X | Board appoints mediator in every case. Factfinding provisions applicable to public sector found in the private sector statute. |
| Minn. | Police & Fire | yes | Not Clear | X | Med. sessions must be public except when provided by Director of Med. Bureau. Med. may continue after parties have submitted final positions. |
| Montana | Public | yes | After "reasonable" period | | |

(Figure II continues on page 134)

## FIGURE II

## USE OF MEDIATION PROCEDURE

Who initiates impasse procedure

| | | Mediation. First step of impasse procedure | State initiates mediation on own | Parties themselves file impasse notification | Notes |
|---|---|---|---|---|---|
| Nebraska | Public & Utilities | If parties request | Not Clear | X | Court of Industrial Relations makes med. available to parties. No mention of med. Fact-finding not used. Dispute directly to arbitration. |
| Wash. | Municipal | yes | | X | |
| Wisc. | State | yes | X | X | Factfinder can mediate. |
| | Municipal | yes | X | X | |
| | Police & Fire | yes | X | X | |
| Wyoming | Fire | no | After 30 days of negotiating | | Compulsory arbitration. |

The following list provides a summary of ways to utilize a mediator to best advantage:

1) As a sounding board for possible contractual language and other benefits;

2) As a means to obtain the union's point of view in an "unofficial" manner;

3) As a means to present "informal" proposals to the union (many management negotiators utilize this informal approach prior to making a formal proposal;

4) As a buffer to soften particularly belligerant individuals;

5) As a neutral party to convince the total negotiation teams, both union and management, of the reasonableness of a proposal; or

6) As a resource person who has a wide range of experience and can provide alternative solutions to problems.

Throughout the process, the negotiating team should keep accurate records of the proceedings and refer to them during the caucus. At this point in time management, without the presence of the mediator, should assess the issues and determine (based upon discussions with the mediator) if any changes should occur.

Mediation is as productive as the degree of skill possessed by the mediator and the desire of the parties to resolve the impasse. If both parties go into mediation after having made their last and best offer, the chances for the mediator of moving the parties toward settlement is limited.

If the parties still have the ability to modify their proposals, but are unsure of how to get the most while sacrificing the least, a skilled mediator will have an excellent change of achieving success and resolving the conflict.

### STEPS TO SUCCESSFUL SETTLEMENT THROUGH FACT-FINDING

1) Be prepared with accurate information pertinent to the issues.

2) Comparisons must be based on a credible universe.

3) Present persuasive facts that the fact finder will invoke in making his determination.

4) Present information in a manner that is easily understoof and clearly emphasizes your points.

5) Do not expect a settlement that is unrealistic or unfair to the union.

--Linford F. Moyer

## Fact-finding

There has been limited experience with fact-finding in both the private and public arenas of management-labor negotiations. Initiated in 1926 under the Railway Labor Act and first employed in Wisconsin's Public Employment statute in 1959, the process has been instituted into many other state statutes as another alternative to the strike.

Pennsylvania incorporated the process into its public employment statute, the Public Employee Relations Act, in 1970. A brief description of a portion of this act characterized the use of fact-finding:

> ..The board (labor relations board) may in its descretion appoint a fact-finding panel which panel may consist of either one or three members. If a panel is so designated or selected, it shall hold hearings and take oral or written testimany and shall have subpeona power. If during this time the parties have not reached an agreement, the panel shall make findings of fact and reccomendations:
>
> (1) (They)shall be sent by registered mail to the board and to both parties not more than forty days after (beginning fact-finding)
>
> (2) Not more than ten days after the findings and recommendations shall have been sent, the parties shall notify the board and each other whether or not they accept the recommendations.. and if they do not, the panel shall publicize its findings of fact and recommendations.
>
> (3) Not less than five days nor more than ten days after the publication of the findings of fact and recommendations, the parties shall again inform the board and each other whether or not they will accept the recommendations of the fact-finding panel.
>
> (4) The Commonwealth shall pay one-half the cost of the fact-finding panel; the remaining one-half shall be divided equally between the parties..(Pennsylvania School Code of 1949, revised, Act No 195 of July 23, 1970).

It is important to note the following points:

1) Fact-finding usually takes place as a part of the collective bargaining process. It is found somewhere on the continuum after negotiations begins and before a strike can occur.

2) Both parties must either accept or reject the findings or they are meaningless. For this reason some individuals refer to fact-finding as "advisory arbitration".

3) A neutral third party is presented with facts on which to base a proposed solution to the impasse. It is management's task to convince the neutral that its negotiating position is fair and reasonable. This is a difficult task and will be discussed more thoroughly later in this chapter.

4) Pennsylvania, as well as many other states, attempts to utilize public pressure to solve differences between management-union by releasing for public reivew, a "fair and equitable settlement". The party who refused to accept the findings of fact may have to justify its position to an aroused public.

Let us assume at this point that a fact-finder's report has been presented. Because of diversity in local statutes, two different courses of action are available. In Pennsylvania, public employees covered by Act 195 may conduct a legal strike if either or both parties reject the fact-finder's report. Under New York's Taylor Law, the parties are required to respond in writing as to why they have rejected the recommendations and this response is available for public scrutiny.

Fact-finding is supposed to arouse the public to place pressure on the parties to reach a "fair and equitable" agreement. The major problem with this assumption is that it is rare when a fact-finder's report is ever released to the public for its reaction. Such reluctance to release reports is partially a result of the dual role that fact-finders fill. First, a fact-finder must determine what is acceptable to the parties and the range of acceptability for each party. Then he must, before completing a report, convince the parties of the fairness of the various proposals and counterproposals. This mediation role is often difficult and many fact-finders do not feel comfortable in this capacity.

The first step in the fact-finding process is the selection of the neutral. Appointments are made by a designated state agency or, in certain areas, by a judge.

At the point in negotiations where fact-finding is being considered, the parties must determine what issues are in dispute. Parties usually limit the number of issues for submission to fact-finding. By agreeing to limit the issues, both sides keep what has been obtained through good faith bargaining. Having obtained various concessions at the bargaining table, it is considered unwise to submit these issues to a neutral who may alter either the language or content of previously agreed to issues.

It is important that the ground rules for fact-finding be established and agree to by both parties. Such rules might include:

1) Agreement to not introduce new issues that have not been previously discussed during negotiations.

2) Positions held prior to invoking fact-finding should be framed in clear language so that the issues are clear.

3) Publicity, in the form of news releases, should be limited to those that are issued jointly.

Since fact-finding is similar to arbitration in the respect that a third party must be convinced that a position is the correct one, a logical and sound presentation is necessary to achieving any degree of success. Preparation of the case for presentation is a time-consuming but critical process that involves research analysis of data and creative interpretation of factual data.

The first data source to consider is the previous collective bargaining agreement. The experience, either positive or negative, may be a factor considered by the fact-finder in determining whether a change in language is needed. Items that should be documented include: changes in statute, grievances relating to the clause in question and the impact of any proposed change upon the total contract.

A second source to be utilized is the minutes of previous negotiations. A history of compromise and intent of language may be verified based upon this examination of these documents.

When analyzing any proposed language that is being submitted to a neutral, it is advisable to search for similar language that has given rise to arbitration, court, or unfair labor practice hearings. An example would be the clause "no emoloyee shall be reprimanded, disciplined, or dismissed except for just cause. The management team, after research, will find many cases that center around this clause. By presenting the facts to a neutral that the impact of such language can result in a multitude of interpretation problems, management can create a strong argument for elimination or modification.

Statistical data is always useful in convincing a neutral of the fairness of any proposal. Both management and labor have access to similar data and this makes it especially important to be accurate when using statistical data. Comparative data is often used to support such issues as salaries, paid holidays, insurance benefits, working conditions, retirement bonuses, sick leave provisions and so on. These comparisons should be made by the management team even if they tend to put the district in a poor position. By being familiar with the types of data that are available and that which may be used by the employee representative, counter arguments and/or modification in the management position is possible.

Another useful data base is the employer's ability to pay. The data base is the various financial and budgetary reports that are generated by management. The inability to pay is a plea often advanced by public employers. The counter response from the union is that it is unwillingness, rather than inability, to pay adequate salaries. Budgetary information, assessed valuations, both state and federal subsidies, debt service, major capital outlays and so forth are all components to determine ability to pay.

Fact-finders are usually not trained to analyze complicated fiscal data. Present only what is relevant and prepare the information in a manner that is understandable but in a tone that will have an impact on the neutral. Data collection is a key element is case preparation, and, when the facts are accurate and understandable, can be the deciding factor.

## Arbitration in the Public Sector

Arbitration in the public sector is a relatively new phenomena that is viewed by some as the ultimate means to settle labor/management disputes. Others view it as the abrogation of management/labor to settle differences through the give and take process of bargaining. While this section will not support either position, the strengths, types and weaknesses of the concept of arbitration will be studied.

A general definition for arbitration is -- "an impartial system of employment justice which is a part of the bargaining process. Arbitration has a long history in labor relations. The courts, through various decisions at the federal and state levels, have found that arbitration is a means of solving the unforseeable that will generally accord with the variant needs and desires of the parties. Introduced during World War I as a means to avoid the disruptive effects of strikes, it has grown to where in 1966, 94% of all labor contracts provided for some type of arbitration. In the public sector today, nearly 84% of the contracts have some type of arbitration procedure delineated.

In utilizing the arbitration process, both employer and the employee agree that two unique phenomena will occur. First, any arbitration decision is precedent setting. The final decision of an arbitrator, if binding arbitration has been agreed to, is usually final and forms the basis for evaluating future working conditions. The reasons for appeal of a award are usually defined by statute to a limited number of reasons: where the award was procurred by corruption, fraud or undue means, partiality of the arbitrator, misbehavior by the arbitrator and when the statutory power granted to the arbitrator is exceeded. While wording may vary from state to state, the aforementioned principles are generally followed.

The second unique aspect of binding arbitration is the agreement of the individual to be bound by the award as a member or representative of his organization.

Arbitration is a process designed to keep both management and labor performing their duties while a dispute is being resolved. The third party-decision-maker is, for all purposes, the final determinant in binding arbitration.

Although all of the information above has referred to binding arbitration, there are actually two types of arbitration. Each is discussed separately on the following pages, but both have common preparational activities which will be discussed later.

## Binding Arbitration Prior to Settlement of a Collective Bargaining Agreement-

depending upon limitations imposed by local statute, this type of arbitration is designed to supplement the actual collective bargaining process. After negotiations have progressed to a point where impasse has occurred, the remaining issues are defined. Each side prepares data and position statements which are submitted to an individual arbitrator or a panel of arbitrators for study. Usually, the arbitrator reviews the issues, calls for testimony and makes a determination based upon what the employer says he can afford, what the employee says he needs, prevailing economic conditions for similar occupations in the area, and within the limitations imposed by statute. The award is usually final and binding upon both parties and cannot be appealed unless the arbitrator has exceeded his authority.

While this type of arbitration is sometimes voluntary, requiring the consent of both parties, in certain occupational classifications it is mandatory. Necesary and critical services, such as police and fire protection, are the most common occupations that are required to submit pre-contractual disputes to binding arbitration.

Concern with utilizing this process is that both parties may tend to withhold their true negotiating positions in hopes that if your offers/requests are low or high, depending upon whether you are labor or management, the arbitrator will settle somewhere in the middle, to the partial satisfaction of both parties. This attitude effectively eliminates "good faith" negotiations. Another concern is that the control of the enterprise is taken from the employer and placed in the hands of an "outsider" who may, or may not, appreciate all of the problems and concerns of management.

In spite of these concerns, the goal of eliminating strikes by submitting the final pre-contractual positions, is achieved. The cost should not only be measured in dollars, but in the right of management to control and direct the enterprise.

Binding Arbitration Arising from Contract Interpretation- A printed word presented to several people brings different interpretations and reactions. The phrase " for reasonable cause " can either precipitate a dismissal or initiate a counter reaction in the form of a strike because the dismissal was not for "reasonable cause". The arbitration of disputes arising from contract interpretation is the most common type of binding arbitration.

Statute permitting, this type of arbitration is designed to provide for the orderly resolution of conflict arising from disagreement over actions by management, or labor, which result in a grievance. During the process, each group continues to perform its appropriate tasks and, as in all binding arbitration, the decision of the arbitrator is final and binding upon the organization and employee.

The key to this process is the grievance procedure as defined in the collective bargaining agreement. If the governing body is either required to or has voluntarily submitted a proviso in the contract that calls for binding arbitration, the definition of what is arbitrable is of paramount concern to management. A proven guideline is to limit the grievance only to items that are in the contract, and to insure that the language in the contract is specific and limited. This will help the union to week out nuisance grievances filed by a malcontent and assists management in determining if a grievance is truly valid.

The process in this type of arbitration is similar to that previously mentioned; it also has the same strengths and weaknesses. The problem is resolved, the work continues, but someone is usually left unhappy. It is a workable means to settle contract disputes without disrupting the educational process.

Voluntary/Mandatory Arbitration, Pre- and Post- Contract - While there are two points in a time line when arbitration may be invoked, there are also two methods to enter the process, voluntary and mandatory. Some statutes allow binding arbitration of unsettled precontractual agreement issues, providing both parties agree; others require that disputes arising from contract interpretation must be submitted to binding arbitration. Past research indicates that the voluntary submission of issues to arbitration is a rarely used process.

Alternatives - The arbitration process is a time-consuming and expensive process for both parties. While the end result of these procedures may be binding arbitration, such a final resolution is not required. The alternative is in the design of the process itself and not in the final resolution of the conflict.

One of the chief criticisms of arbitration, be it advisory or binding, is that it is a time-consuming process that may take months to settle and involves the efforts of attorneys, staff and resource personnel. One approach used in the private sector, expedited arbitration, attempts to minimize these issues.

Expedited arbitration - originally adopted in 1971 by the 10 major steel producers and the United Steelworkers of America, this process provides for informal hearings, no formal briefs and a binding decision within 48 hours of the hearing. The issues presented for processing under expedited arbitration are limited to those which are not novel and have limited complexity and significance. Additional ground rules include: the decision of the arbitrator is not precedent-setting and the arbitrator must base his decision on the records developed by the partied before and at the hearing and not by supplemental information.

Public sector alternatives to the standard arbitration procedure include mini-arbitration, bench awards and mediation awards. All three procedures require an actual hearing and the utilization of an informal rule of evidence procedure. In a bench award additional oral arguments may be presented to the arbitrator at the hearing. At the conclusion of the hearing the arbitrator gives an oral ruling which is supplemented by a brief statement in writing the following day. Mini-arbitration limits the amount of testimony that may be introduced and limits the detail required in the written decision. Mediation arbitration involves the arbitrator meeting separately with the parties in an attempt to reach an agreeable solution to the ptoblem through the process of give-and-take. If a point of impasse is reached, the arbitrator decides the case upon the facts.

Key to all these processes are limitations on content, impact of the issue and time limitations. Time is crucial since industrial research indicates that rapid resolution of conflict tends to improve worker's attitudes as well as productivity.

## Preparing for Arbitration

The underlying concept in the arbitration process is the acceptability of a qualified, neutral party to decide a contented issue for groups holding diametrically opposed viewpoints. The selection of this individual is the first step after a decision has been made to proceed to arbitration.

The Arbitrator -- It is possible for the parties to specify a permanent arbitrator who is familiar with their working conditions in a collective bargaining agreement. The agreement may specify an organization such as the American Arbitration Association, the Federal Mediation and Conciliation Service or any of the state or province agencies to serve as arbitrator. Each organization has its own selection process and should be studied carefully.

The selection of the specific individual to arbitrate an issue must be by mutual agreement. Therefore, it is management's responsibility to study the submission of possible arbitrators with great care. Since there are no special certifications or qualifications required of a person who wished to serve as an arbitrator, management must carefully investigate a veriety of areas relating to each potential arbitrator. Some of the items for review include:

1) Past arbitration awards.

2) Review of bibliography supplied by the agency.

3) Knowledge of public sector arbitration.

By reviewing past awards, a group may determine, at least as much as possible from the printed media, an arbitrators interpretation of statute and contract language. Past training and experience may uniquely qualify a particular arbitrator for a case on a specific issue. Discussion with other parties who have utilized an individual in the past is also helpful in the selection process.

Preparing the Case -- Once an arbitrator has been selected, the ongoing process of case preparation becomes intensive. Management should play the role of "devil's advocate" and examine its arguments critically and fairly. These suggested steps should be followed in preparing a case for arbitration:

1) Review the history of the dispute through every step of the process.

2) Examine carefully the initiating paper (submission on demand) to determine the scope of arbitration.

3) Review the collective bargaining agreement from beginning to end. Try to find relative clauses that have some relationship to the conflict.

4) Assemble all documents and papers that relate to the issue before the arbitrator. If the union possesses certain documents you do not, ask them well in advance of the hearing so they may be analyzed.

5) Interview all witnesses. Make certain they understand the total case and their testimony in the case.

6) Prepare a written summary of each witness's testimony and review it carefully for impact and content.

7) Study the case from three points: labor, management and neutral. Be prepared to answer opposing evidence and arguments and to provide information to clarify vague and unfamiliar issues.

8) Review the case with others. A fresh viewpoint can disclose weaknesses in your arguments or open up a new approach to the issue.

9) Read articles, awards and court cases that are directly related to public sector employment are in abundance. While awards by other arbitrators for other parties are not directly related to your particular issue, they may help clarify the issue.

(The American Arbitration Association reports labor arbitration awards released by parties in three monthly publications: Summary of Labor Arbitration Awards, Arbitration in the Schools, and Labor Arbitration in Government. Other publications are available through various publishing houses.)

Perhaps the first question that should be raised by management is arbitrability. Challenges concerning the arbitrability may be lodged, in some cases, with the courts or with the arbitrator of the appointing agency. The general guide, based upon a Supreme Court decision, is that the question of arbitrability should be determined by the arbitrators. Two types of arbitrability challenges may be initiated: substantive and procedural.

Substantive challenges originate when one of the parties claim that an issue is beyond the arbitrator's scope of authority. This usually results when one of the parties feels that existing statute controls the method to resolve the conflict.

Procedural challenges are often raised when the original grievance was filed after the time limits for filing had expired, or the grievant had already accepted settlement at a lower step and then changed his mind. Arbitrators listen to the challenges at the outset of the hearing, but usually reserve judgment on arbitrability until all of the issues have been presented.

As previously mentioned, participants in the issue should be interviewed and notes made of all testimony. The passage of time between an incident and a hearing frequently leads to unsure recollection of events. Illness, death or unabailability of a witness mandates that written statements be prepared. Too prequently such an approach is not utilized until the final step in preparing for arbitration. Initiate the accumulation of written statements and records from the outset.

Your own witnesses can be your worst enemy -- and your opposition's best witnesses. A witness who is unsure or confused can hurt more than they can help management. Call all witnesses and ask them to review the whole story including everything they can recall about an incident or issue before arbitration. The purpose is not to change anyone's perceptions of the facts, but clarification is crucial. It should be noted that witnesses should be instructed to answer questions briefly, honestly and to limit answers only to the portion of the event of which he is knowledgeable.

After a thorough review of the case, final attention should be paid to the remedy. In basic terms, this is what the union wants from management. It is desirable to deal with the remedy as a separate and distinct issue. Any arguments used in this manner do not prejudice the merits of the case and, if the arbitrator rules for the union on the merits, the proposition that the remedy is excessive, unwarranted, or in violation of statute or past practice may be handled separately. Many an arbitration case won by one party was lost in the award of the remedy.

After all of the preparation has been completed, management must ask several questions. The first, and most important, is whether or not management will win the case. If the unbiased answer is "no", then the whole process must be reviewed to determine the impact of giving the remedy requested, informally negotiating a revised remedy, or proceeding to arbitration to "save face". The last reason is the poorest of all reasons to proceed to arbitration. Management should know long before the arbitration step if it was wrong, if so, admit it and plan ahead so as not to make a similar mistake in the future.

## The Hearing

General rules and procedures for handling a hearing are published and are made available to the parties well before the hearing date. Procedures should be carefully studied and adhered to. To the practitioner, the more critical question is, "What does the arbitrator look for in studying the issues presented to him?"

One area of action/reaction is defined by the terms arbitrary, discriminatory or capricious. Did management's action deliberately disregard past principles established in the employer/employee relationship (arbitrary)?; Did the employer deliberately discriminate in its promotion policy because of union affiliation, sex, race, or religion?; Did management give overtime to employee A and deny it to employee B (capricious)?

The most convincing evidence that can be presented to an arbitrator is a document that is kept in the normal course of business and is completely separated from the arbitration process. The general rule is that this document provides factual records of events or a single event. Witnesses are important and can serve as the method to enter documents into the record.

A well organized presentation, utilizing well developed documentation and qualified, prepared witnesses, always adds to the chances of winning a case.

## The Award

In most states there are procedures for appealing an award within a certain time period. It is incumbent upon management to carefully review the award and its impact upon the overall operation. If the award is accepted it should be implemented rapidly and any changes in operation mandated by the award should be made expediently.

## Summary

Arbitration achieves the goal of limiting disruptive strikes but can effectively remove from management certain prerogatives it has historically enjoyed. Because it is an expensive and time-consuming process, the decision to proceed to arbitration should be made only after serious deliberation has occurred.

## Grievances

The grievance procedure is a process that is defined at the negotiating table to handle conflicts that result from disagreement over the interpretation of the collective bargaining agreement. The purposes of the grievence procedure may be summarized in the following mannger:

1) It is an orderly process designed to submit disputes to discussion for resolution rather than to use the strike to settle problems.

2) It is the means to interpret and administer the collective bargaining agreement.

3) It gives the employee an opportunity, through a formalized process, to air his complaints about the myriad or working conditions covered by the contract.

4) It is a means to improve morale and efficiency. Research has shown that when employee "gripes" are resolved in a rapid and orderly manner, efficiency, morale and production improve.

While the purposes of a grievance procedure appear to be positive factors for labor/management relations, the end result of a grievance procedure is to allow labor to challenge various management procedures. This can result in an erosion of management control and increased costs.

The initiation of grievance procedures in the public sector resulted from various statutes mandating that public employers and their employees submit disputes involving the interpretation of contract language to a grievance process. Some statutes limit the subjects of the grievance exclusively to items contained in the collective bargaining agreement, while others leave the determination of grievable items to the discretion of the local governmental agency. Most grievance procedures have, as a final step, some type of binding arbitration.

## Ground for Grievances

Even if the local governmental unit is required to submit unresolved grievances to arbitration, the structuring of the grievance process and the definition of what constitutes a grievance, is usually a local decision. Here is a sample grievance definition:

> "A grievance is an alleged violation by the Board or its representatives regarding the interpretation or implementation of the items enumerated in the collective bargaining agreement."

This simplistic language achieves an important goal in that any terms or conditions of employment not enumerated in the collective bargaining agreement are not subject to the grievance procedure. While this allows management to preserve many of the prerogatives it exercised prior to formalized negotiations, this type of language should be supplemented, through Board-adopted policy, by a complaint procedure. This assurance of due process for an individual employee provides management with a means to hear the concerns of the indifidual outside of a negotiated agreement process. Another example of what is referred bo as "loose language" is presented for contrast:

> "A grievance is an alleged violation by the Board or its representatives regarding the interpretation or implementation of any of the articles of this collective bargaining agreement, past practice, or Board policy."

It is apparent that the language as it appears above places any and all actions taken by the Board and/or its management team subject to challenge under the grievance process. It also may, if the contract states, allow a neutral third party in the form of an arbitrator to determine the policy of a school district. This concept should be enough warning to make any management team extremely cautious about the definition of what is a grievance.

After determining the definition of a grievance it is advantageous to know, in general terms, what is grieved. Studies by various individuals and groups have given rise to the following synopsis of the various findings:

1) Twenty-five percent of most grievances result from some type of disciplinary action taken by the employer against the employee.

2) Promotions, transfers and layoffs where seniority is an issue accounts for approximately 20% of grievances.

3) Job evaluation and assignments account for 12% of grievances filed.

4) Overtime, vacations, holidays, working conditions, and the like, comprise the remainder of grievances.

It is important to remember when negotiating a contract, training first line supervisors and when interpreting a contract, that over half the grievances filed will be related to the issues of seniority, job evaluation and assignments and employee discipline.

FIGURE III

FORMAL STEPS IN THE GRIEVANCE PROCEDURE

| | Employee Organization | Management |
|---|---|---|
| STEP I | Employee or steward files a written grievance. | First level supervisor accepts and responds within a given timeframe. |
| STEP II | Grievance committee forwards to Step 2 if response of management if not acceptable. | Superintendent or Assistant Superintendent meet with committee and responds. |
| STEP III | Grievance committee forwards to governing body (school board) | Board reviews the grievance and responds. |
| STEP IV | If the grievance is rejected and arbitration is the final step, both parties become involved in the selection of a neutral arbitrator whose decision is final and binding on all individuals and all parties. | |

## Steps in the Grievance Procedure

Figure III delineates a sample procedure that is illustrative of a model followed by many public employees.

Each step has time limits that, where possible, should be strictly adhered to. Time limits are designed to insure the rapid flow of discussion and timely decisions so that the issue may be resolved quickly for the benefit of management/labor relations.

## The Roles of Management Team

Paramount to the successful operation of the grievance procedure is a well-trained management team. Training in the areas of human behavior, contract interpretation, the arbitration process, historical studies of past arbitration and relevant court decisions are all essential. While the personnel director and/or the superintendent have overall responsibility for developing training programs, the first-level supervisor is the key component in the grievance procedure.

The first-line supervisor, when adequately trained, should exhibit the following types of behavior:

1) Treat all employees fairly and equally.

2) Work with the union to resolve minor problems in a cooperative manner.

3) Have an open-door policy that invites employees to discuss problems and concerns in an informal manner.

4) When receiving a grievance, does not take it as a personal attack and responds with facts and does not make promises that cannot be fulfilled.

5) Admits to making a mistake and takes corrective action.

The supervisor should have an individual to consult with once a grievance is filed. In many cases this will be the Personnel/Staff Relations Officer. He is the agency's information resource person on previous grievances regarding similar situations. The two parties working together bring into perspective the district-wide view of the subject being grieved and the unique situations surrounding a specific agreement. Once a management answer to the grievance is prepared, the first-level supervisor is the individual who usually is responsible for meeting with the grievant. During this meeting with the grievant the first level supervisor must present facts and try to convince the grievant that the management action that precipitated the grievance was just and correct.

Unions have allocated a significant amount of resources in terms of time, material and money to training staff members to participate in grievance procedures. Management should provide the following resources for its team in order to place both parties at equivalent positions. Management should:

1) Provide adequate and continuous training in the dynamics of conflict resolution through utilization of the grievance process.

2) Subscribe to various state and national periodical publications that deal with the legal aspects of public employement with emphasis on education. Publications of a legal nature are dis-

seminated by organizations of school solicitors, school boards, and independent organizations and should all be included in management reading. Both management and labor views should be collected and organized.

3) Provide adequate staff to assist in research and preparation of data necessary to make informed decisions.

4) Have an attorney familiar with public sector labor law available for consultation.

5) File, categorize and analyze all grievances to determine what elements of the contract or the general operation are generating the conflict.

6) Have the full support of the governing body in handling grievances. This will only be possible if they are well informed throughout the process.

## Summation

The grievance procedure is becoming more common in public sector employment. Be being acquainted with the process and having a well-trained management team, the employer will be able to live with and utilize this process to his own advantage.

## Chapter 12

# STRIKES

By Dr. Thomas Romett and Dr. Blaine Smith

Many states do not permit strikes by public employees. The public school administrator who believes that prohibition will prevent a strike in his district is unrealistic. Illegal strikes have occurred in Michigan, New Jersey, Pennsylvania and Wisconsin, to list just a few. Striking as a pressure tactic is a way of life in many areas and, if the trend of permissive legislation continues, will continue to expand.

"We have nothing to fear but fear itself." This famous quote has particular relevance when we talk about strikes in the public sector, particularly by teachers. Teacher strikes and their management are mind established, which is a more mental than physical condition. In may help to remember that there are worse things than teacher strikes, such a capitulation. To agree to impossible demands just for the sake of avoiding a strike is a cop-out and is not in keeping with the commitment made in representing management at the bargaining table.

Very careful consideration should be given to the extent to which a district intends to go if a strike is called. If management does not intend to be firm and see any strike through to the end it is best to capitulate at the very beginning and never enter into a strike.

The first week of a strike will usually be characterized by a congenial atmosphere with little evident bitterness. The second week will show the first signs of bitterness. The pressure will begin to build as teachers attack leaders because their income has stopped, and as the public attacks administrators and the board because students are not in school. However, at this point, the public will generally be in support of teachers. The third week will show signs of extreme bitterness as teachers begin to feel the financial pinch. The public will begin to lash out at the board for prolonging the time that children are missing school. The pressure builds as teachers who are using union tactics utilize mass media to lay the blame for the dilemma on the school board. The fourth week shows signs of extreme public bitterness which will be directed toward teachers. Teachers' bitterness will also increase toward administration. The lack of pay will cause severe animosity to develop which will result in conflicts within the ranks of the association. The longer the strike continues, the more bitter the conflicts will become.

These conflicts can be controlled and managed to some degree by good advance preparation. It is necessary that the board and administration understand the bargaining process and particularly understand why a strike happens. If collective bargaining is a must, accept it, because to resist only creates additional problems. The process can be used to the advantage of management as well as the association if a posture of action, rather than reaction, is assumed.

Preparation for a strike must commence when negotiations start. Having the necessary expertise is essential to insure that every step is taken to manage a strike effectively. A district may elect to use an existing staff mamber for this role or bring in outside expert assistance. Whichever is used, make certain that those who are charges with the responsibility have the necessary training, staff and authority to carry out the task effectively.

The strike manager should develop a plan which will reflect the lines of communications to be established and maintained. A great deal of the successful management of a strike is dependent upon the effectiveness of the internal communications network and a functional external communications plan. All administrators, including field administrators, should be kept fully informed of all developments and the ramifications of each development. In a strike, a public relations warfare emerges, and the community becomes the battleground. It is critical that accurate and complete information be provided to the public. It can be safely assumed that the association will make every effort to use communication with the public to share its side of the story and seek support.

The steps for planning for a strike are important and should be established long before the threat of a strike looms. As a matter of fact, plans for a strike should be developed when negotiations commence.

Acceptable parameters must be established with the Board of Education. These parameters must deal not only with negotiable items and the limits to which the negotiating team may go in order to reach an agreement, but also the extent to which the Board will let the team go to avoid a strike. Some Boards of Education may assume the posture of "give them nothing and make it retroactive" while other boards may direct the negotiations team to agree with almost anything to avoid a strike. It must be assumed, however, the strike may be unavoidable. In that case, careful and complete plans should be available.

## Do teachers have a right to strike?

Obviously, in a legal sense, this is a moot question, since in many states it is illegal for public employees to refuse to work. However, the question should be examined from a different perspective; that is, what are the ramifications of the social contract? Rousseau described the social contract as the unspoken agreement in order to live together in society we must forego things we might otherwise claim a "right" to do.

## TYPES OF GROUP ACTION BY LABOR ORGANIZATIONS

### Demonstrations

- Picketing on own time on District property
- Protest marches
- Protest Campaigns through Public Media

### Limited Strikes

- Mass Resignations
- Picketing on District time
- Mass sick-outs
- Slowdown
- Refusal to work extra assignments during school day
- Following school regulations to the letter, enforcing to the letter

### Strikes

| | |
|---|---|
| Sympathy Strike: | Demonstrates employee solidarity; bring pressure on management |
| Wildcat Strike: | Not sanctioned by labor organization |
| Quickie Strike: | Unannounced, spontaneous strike |
| Sit Down Strike: | Refusal to work but employees remain at school |
| General Strike: | Involves all organized employees in community or geographical area |
| Rolling Strike: | Work stoppage at various school sites; unannounced until start of day |
| Walkout: | Employees leave place of employment en masse; same as general strike |

For those who accept assignments which deal with the health and well-being of society, certain obligations are assumed and certain commitments are made which tend to alter their rights as compared to the rights of others within society. Doctors are expected to aid those who are ill; lawyers are expected to represent those who need their services; and, everyone expects to be protected by firemen and policeman. Obviously, legal restraints are not sufficient to insure that the public's well-being is protected. Instead, it must rely on the personal commitment made by those whose employment is such that the health and well-being of the entire community is dependent upon them.

In turn, society must assume a certain commitment to these public servants in terms of providing adequate financing, job security and an alternate means of handling grievances. Since these employees cannot strike against individual employers without holding hostage a large segment of the community or society in general, some means must be designed in order for legitimate complaints to be heard and adjudicated.

To prohibit the right to strike for employees, solely on the basis of their status as public employees, is unrealistic. The argument can be made that the health and safety of the public is far less in peril during a strike of city park employees, than during strike of private hospital employees. Therefore, from a legal sense, the basis on which a decision should be made as to the legality of a strike must be the effect of a strike on the health and safety of the public, and not on the basis of status as public or private employees.

Whether a work stoppage in the public sector is morally right or socially acceptable is a moot question. Strikes have happened and will continue to happen. The more important thing is to prepare in such a way as to minimize the effects and reduce the long-range damage.

## Strike Development

At some point in time during the negotiating process, between final impasse and after a mediator has been involved, some tentative decisions need to be made by management. Striking is a pressure tactic and management should realize that counter pressures may be brought to bear on the negotiating committee of the union. First, consider what types of actions on the part of unions will give management clues that a strike may be imminent. Some may seem far-fetched, but experience has revealed that these actions can and do occur:

1) At the negotiating table, the union position on minor as well as major issues becomes inflexible. Union representatives keep emphasizing what "they" gave away and that "you" gave nothing.

2) The scheduling of negotiating sessions is either for all day-all night affairs or nothing at all. This tactic is designed to show the public, at a later date, of the union's willingness to bargain in "good faith".

3) Attendance at faculty meetings and voluntary attendance meetings decreases significantly.

4) Pamphlets describing the fairness of the union positions appear in faculty rooms and even go home with selected students.

5) Teachers may picket schools before and after school hours to gain publicity while still showing good faith by continuing to work.

6) School board meetings are attended enmass by the union. When possible questions directed at the Board by the union are designed to focus on anything that might embarrass the Board. Another tactic associated with this is to attend the meeting and say nothing and to walk out as a group prior to the conclusion of the meeting.

7) A sudden increase in interest by the media concerning the progress of negotiations is evident. Editorials from parents (who may also be teachers), concerned citizens or others, will suddenly appear in the newspaper. The general theme is that teachers are wonderful people who deserve more because they do so much for children. The Board's lack of concern for children and/or their unreasonableness in meeting teachers' requests may also be the subject of public comment.

Management's response to these tactics should be deliberate and designed to show confidence. Public discussion, open debate and "off the cuff" remarks to the media are not procedures that will reduce union pressure. Good organization, having a single spokesman, and advanced planning are the ways to bring pressure on the union. Consider this list of procedures.

1) The spokesman for the Board (usually the chief negotiator and/or superintendent) responds to questions from the media in a positive manner. "We are continuing, with great effort on both sides, to resolve the issues confronting us." or "We hope to discuss the issues at greater length to find an acceptable solution." Do not present the other side as bad guys. It stiffens negotiating positions and can leave management with some embarassment when a contract is finally settled.

2) Remember that all contracts are eventually settled, and the teachers, community and management must cooperate to provide a good educational program.

3) Develop a set of strike procedures to be followed by non-affected staff. Disseminate these procedures to appropriate personnel and meet with them to answer wuestions and/or make adjustments to the procedure.

4) Do not allow the union to trap the Board into discussing the progress

of negotiations at an open meeting. A discussion of this type will undermine the effectiveness of future negotiations.

5) Always display a unified front. Disagreements between Board and management should be handled in private.

6) Meet with legal counsel to determine what action can be taken by the Board in the event a strike does occur. The course to follow will vary with the controlling statute. Where strikes are permitted, and a strike is legal, a remedy is to seek an injunction. Pennsylvania limits an employer's ability to stop a legal strike by requiring the employer to prove that the strike promotes a "clear and present danger" to the public health, safety and welfare.

7) Determine what a strike will cost and decide if the cost will affect your bargaining position. Consider such items as:

   - State subsidy may be decreased if based upon student attendance or per pupil expenditure.
   - Time spent by management in handling a strike is costly and deviates energy away from normal tasks.
   - Good employees may search for other jobs because of the volatile situation created by a strike.
   - Overtime costs for security and building maintenance will increase.
   - Legal fees will increase.
   - Sabotage and malicious mischief may create a need for significant sums of money to be diverted for maintenance and repair.

Although there are other costs, both subtle and obvious, the aforementioned listing should provide a foundation for building a cost list for your unique situation.

## What to Say and What Not to Say in Communicating Negotiations and Strike Issues

Firsthand experience among districts which have suffered through strikes was translated into guidelines for action by the National School Public Relations Association. What benefits and does not benefit the school system and ultimately the students is the purpose of the following guidelines:

DO NOT

...publish teachers' proposals costed out to the last dollar.

...publish all demands of teachers. (This doesn't work, creates bad images, usually backfires.)

...imply you won't negotiate any further. (Always leave a way out.)

...agree on joint releases. (Teachers rarely respect this, and management gives away its rights in doing so.)

...put self in position that Board sold out to get settlement; never say "We had to settle."

...knock the settlement; use the approach that we had to give a little more, but it's worth it.

...become involved in mass meetings. (Board should never attend; there are usually people there who are trained to disrupt; and because such meeting are hard to control, involve personal attack, and lack logic.)

...provide a martyr. (Keep the superintendent out of the firing line.)

...attack teachers as greedy people.

DO

...explain where you are at on salary proposals, but talk percentages and generalize about unsettled areas.

...maintain a professional approach. "Professional teaching staff deserves more money; we've offered them all we can."

...pound away at the concept "We love our teachers, but we don't have the money."

...convince the public that there is no extra money; if you can convince the public, teachers will generally accept it.

...choose issues carefully before you publicize.

...settle other issues before salary; teachers will strike on principle more so than on money.

...have empathy for reporters.

...have a strategy or plan because the other side will.

...remind the Board that it is responsible for maintain credibility of teachers.

...remind the Board that it must always be on the offensive, not the defensive.

## THE DAY CONTRACT SETTLEMENT IS REACHED

...quote Board president, not the superintendent.

...notify the press immediately. (no joint release; indicate effect of new contract on school, budget, students, and let the PR person write a release.)

...notify administrative staff.

...communicate with power groups.

## Strike Plan

A research of the literature and discussions with administrators who have experienced strikes in their own school districts brings one to the conclusion that the many variables between school systems make it extremely difficult to provide concrete suggestions or ways of coping with strike problems, as each situation has its own uniqueness and local needs. Most people realize that it is impossible to give administrators all the information necessary to deal with all the problems they may face during a strike; however, a checklist or guideline of things to look for or anticipate seems to make the most sense at this time. This material is not suggested as a panacea, but certain common factors seem to exist and prior knowledge or anticipation will help.

## Answer Specific Questions

* Whom do we notify?

* Once it is determined that a work stoppage will take place, we should first notify all school administrators and supervisors, the Board of Education, and the news media. The superintendent has the authority to declare a state of emergency and close the schools.

* Who will be the school district's spokesperson?

* The Board of Education should delegate this function to the superintendent. A hotline will be established where all information will come into the Administration Building, and the Executive Council should receive daily briefings of the status of the work stoppage.

* Who will alert the police?

* Mr. __________ will alert the police.

* Who will photograph evidence of illegal picketing activities?

* If necessary, __________ will photograph evidence of such illegal picketing activities.

* What should be the role of the Board members?

* To delegate the authority to the superintendent to make the final decisions regarding all matters of work stoppage.

* What should be the role of the administrators?

* To follow the strike plan as outlined by the superintendent and to keep the superintendent's office informed of all major problems.

* Who should organize data to be submitted in consideration of an injunction?

* Mr. _________ in cooperation with Mr. ________ and ________ should organize data to be submitted in consideration of an injunction.

* If there is a work stoppage by the staff, we would recommend the following:

General Relationships

1) Advance notice to all administrators may be anywhere from 24 hours to none. Students may have arrived in the building before the principal is notified. We shall make every effort to alert you via the telephone once the decision to strike is confirmed.

2) It is our recommendation that schools be officially opened: obviously, the school system which is officially closed reduces the problems for the school district and the administrators.

3) It is recommended that principals or supervisors do not attempt to influence employees one way or another after a decision for a work stoppage has been made. Such action will bring the principal or supervisor into disfavor with any opposing actions which may exist. Such influence would probably not be significant, and it is not worth alienating other staff members.

4) General comments about the work stoppage must be extremely guarded. You, as an administrator, could be quoted accurately or inaccurately. Even simple statements like "those striking teachers" can come back to haunt you, and fragment rapport with staff.

5) It is very important that all administrators in the district stay united in their position relative to the work stoppage.

Relationships with Employees

1) Experience indicates that many of the teachers will contact the principals prior to or immediately after the start of the work

stoppage. It is advisable to maintain good liaison for a number of obvious reasons.

2) Some teachers will show up for work. It is recommended that you encourage the teachers to return home after the first day of the strike.

3) It is important to develop "pipeline" contacts. Pertinent information should be directed to the administration building on extension. If the information is important, we shall assume the responsibility in the administration building for passing it on to the other administrators.

### Relationships with Parents

1) Whatever is said to parents should be prudent so that good rapport between parents, staff and school administration is maintained.

2) Anticipate problems if students must be sent home. There will be cases of parents working, no place to go, and so on. The problem is magnified at the elementary leve. Legal responsibility is the same as any other school day.

3) Volunteers may appear. It is not recommended that volunteer help be used in an attempt to keep schools open. Such persons may create additional problems in terms of responsibility and ethics.

4) Pressure tends to be focused on the Board of Education and the superintendent. The principals do not seem to be involved in the pressure tactics or results. He should resist all such pressures in the event they occur.

### Relationships with Central Office

1) Communication responsibilities will be assigned to --------- the Coordinator of School-Community Relations.

2) Another problem involves the members of the Board of Education. In some instances they were individually involved with principals and teachers. A time of crisis is a good time to stay in established channels.

3) It is important to have all building principals and supervisors adhere to the strike plan. If individual principals start making modifications or changes, it sets up further problems for the principals who are diligently following the procedures of the central office. It is true many circumstances may vary between schools, but at no time should one principal emerge as a "friend" or "foe" at the expense of a fellow principal.

4) Who closes the school? This simple question has casued problems in crises districts. This authority should be fixed in the emergency plan. It is recommended that the superintendent assume authority for closing individual schools or the entire district. Experience has shown that when the open or close decision is made, it should then be applied to the entire district.

## Relationships with Secretarial and Non-Certified Personnel

1) Secretaries will probably find themselves viewing the crises with mixed emotions.

2) It is not always possible to count on the attendance of the secretarial staff. In some instances, they may engage in a work stoppage with the teachers.

3) It is recommended that in an emergency secretaries be given additional responsibility and used very carefully limited ways for "staff assignments". Secretarial assistance on the phones is of major importance.

4) It is important to keep the secretarial staff completely informed during the cirses; they can be of great assistance.

## Relationships with Students

1) In addition to the need of good communications with students inside and outside the building, it is necessary to be able to "read" the student body and endeavor to determine its reaction to the work stoppage. As is typical in any student body, there will be mixed reaction.

2) Student loyalty may be expressed in many ways. There will be loyalty to the school and the feeling that school should be in session. Other students may exhibit loyalty to the teachers who are not present. A dissident group may consider it the opportunity they have been awaiting. A crisis is the time to exert basic faith in the honesty and integrity of young people. We have many responsible students in our student body.

3) Experience has shown that the responsible students have been of tremendous assistance during a work stoppage. They have followed destructive and malicious students and endeavored to straighten up after them. They have picked up waste paper and other litter. All of this has occurred without instruction or outside direction.

4) Aimless loitering or congregating by students should not be allowed. Students should be assembled in specific locations and kept completely informed as the situation develops. It is

well to keep students contained in the building if possible. If they are kept informed, they may be less inclined to want part of the action. Keep the tone serious.

5) Some circumstances would suggest the closing of specific restrooms and notification to students of those remaining open. This would provide a reserve of clean restrooms in emergencies.

6) Experience has shown that the following student problems have occurred:

   - mischievous vandalism;
   - clearing out books and materials from unlocked lockers;
   - spreading candy or other food in the halls;
   - student related walkouts; and
   - disrespect and other behavior problems.

7) Efforts should be made to avoid "using" the students either for or against the work stoppage. Principals should avoid falling into this trap. Normalcy will eventually return.

8) It is very important to maintain a "sober" attitude in the eyes of the students. The work stoppage is not a "lark", and the students must be impressed by the seriousness of the situation.

9) A major problem will occur in contacting parents when students are to be sent home. It is obvious that most buildings do not have enough phone circuits to do this satisfactorily. It will be necessary to use a local radio announcement. In most situations parents will have had some forewarning that there is a work stoppage within the school district.

Communications

1) Communications with the central office must be open and complete.

2) Good relationships prior to and during the crisis will insure that communication exists between the principals and teachers. The principal must exercise diplomacy during such communication and endeavor to be honest and straight forward.

3) Parent contacts will inevitable occur if the stoppage continues. It is not advocated that the principal become the champion of either side. A clear explanation of the facts as he knows them or referral to central administration are two methods to use in parent communication.

4) Interscholastic athletic team activity should be coordinated through the athletic director. He shall be responsible for lining of fields, the electrician is responsible for stadium lights, and coordinating post-game cleanup.

5) It is recommended that the refreshment stands be closed to students.

## Summary

All strikes end. The attitude during and after a strike shown by the management team will affect the employer/employee relationship for the duration of the contract and may have an impact on the next round of negotiations. Be professional, avoid personal attacks and criticism, but remember that management must manage the schools.

## SAMPLE STRIKE PLAN

Should a strike situation occur, the following guidelines will become effective.

### I. Confidentiality

The details of this plan will be held confidential by all employees of the school district who hold positions of an administrative or supervisory capacity.

### II. Legal Processes

The legal advisors of the Board of Education shall prepare for appropriate court action, particularly requests for injunction against the striking employee association. Legal advisors shall be available for consultation on all matters that may result in legal action by the Board of Education or against the Board of Education.

### III. Communications

A. General:

1. Communications between buildings and the superintendent's office shall be maintained by telephone and a fan-out telephone network. Communications from the building to the superintendent's office will be by telephone directly through the central office switchboard. In event this system becomes jammed or inoperable, use the direct line.

2. Courier service for written communications will be established and this service will be dispatched by the superintendent's office only either to deliver messages to the various buildings or to pick up meesages and reports from the buildings.

3. Communication between the superintendent and the Board of Education shall be by telephone, special courrier or special meeting of the Board, whichever is deemed appropriate by the president of the Board of Education.

4. Each building administrator shall report in writing daily:

   a. the number and category of employees reporting for work. Principals should maintain a daily list of employees who report for work.

   b. security problems at each building, if any.

   c. the presence of picket lines or other groups of demonstrators and a description of their size and activities.

5. Unusual situations that develop at any building should be communicated immediately to the central office by the building administrator.

6. Building administrators should maintain a detailed daily log of activities in each building.

B. Communications to Employees:

1. If picket lines are present, administrators and other employees may attempt to cross the lines and enter the building. If their way is obstructed in any way, they should inform the pickets that they desire to enter the building and carry out their assigned duties. If pickets refuse to permit them to enter by physical contact or apparent physical contact, the employee should not attempt to force his way by the picket line. He should, however, report his inability to enter to the building administrator or to his immediate supervisor.

C. Communication to the Public:

1. All communications with the public shall be done by the superintendent's office or at the direction of his office. Building administrators will be furnished with appropriate messages so they may respond to public inquiry.

2. The public media shall be used to report a strike situation. The public will be requested to stay away from school buildings during the course of the strike.

3. Normal operations will continue throughout a strike situation unless detrimental to health and safety.

### D. Communications Center

The center of communications throughout a strike situation shall be the information services office which shall receive and send all communications as directed by the superintendent.

The information services office shall consolidate on a continuing basis information received from the school district and provide at least twice daily such reports to the superintendent for his assessment.

### E. Press Relations

All press releases shall be made through the superintendent's office. However, if members of the press appear at a building and wish to be admitted, they should be admitted. Building administrators may, if questioned, describe the situation which exists at their building. Telephone requests for information should be referred to the superintendent's office. Requests to film activities inside or outside the building should be permitted.

## IV. Relations with Striking Bargaining Units

The Director of Personnel shall, at the direction of the superintendent, attempt to maintain a continous state of negotiations with the bargaining unit on strike. Communication to the striking unit shall be under his direction.

## V. Relations with Non-Striking Bargaining Units

Relations with non-striking personnel shall be the responsibility of the assistant superintendent for business affairs. He shall keep each non-striking bargaining unit informed regarding their duties as set forth in unit contracts with the Board of Education.

In cooperation with appropriate administrators, he shall also develop plans for work assignments or for lay-off periods for non-striking personnel as necessary.

## VI. Relations with School District Vendors

At the direction of the assistant superintendent for business affairs, vendors shall be informed of delays or delivery problems that may arise during a strike situation. He may cancel or delay deliveries at his descretion.

The purchasing agent and director of food services shall assist him in communicating with vendors and with cafeteria personnel.

VII. Security of the School Plant

At the direction of the assistant superintendent for business affairs, the security of all school district buildings shall be maintained. Each building administrator and employees assigned to him shall be responsible for a security system for his building. Custodial-maintenance personnel assistance shall be assigned on approval of the assistant superintendent for business affairs.

VIII. Unusual Situations

A. Should telephone communications from a building become inoperative, the central office should be notified immediately by use of a near-by telephone or by dispatching an employee to the central office. Emergency communications will be established by central office action.

B. Should any situation occur which in the opinion of the building administrator requires police assistance, he may call for such assistance at his discretion. Such requests for police assistance should be immediately reported to the information center.

In summary, the key word to remember is dealing with work stoppage is "planning." Planning for the strike should commence when negotiations start. Unless you are prepared to see a strike through, it would be best to capitulate before the strike occurs. The plan should be developed for dealing with a strike that includes the formation of a strike management team which will establish a network of communication to keep everyone fully informed. The team should also deal with problems relating to fringe benefits, securing property and making provisions for non-striking employees which probably would include support personnel.

An effective and complete communications system is a must. All segments including students, parents and especially administrators should be kept fully informed as the strike develops and progresses. However, care should be taken to have only one spokesman, and that should be the superintendent or his designate.

Preplanning will reduce anxiety and will make it possible for those is the hot seat to remain calm and make decisions which will not make the strike worse, but will minimize the negative effects.

## Chapter 13

# THE FIRST-LEVEL SUPERVISOR

By Charles F. Loedel and Dr. John L. Grogan

Some authors declare that the "central staff" of a school district plays the most important role in negotiations. This is true in the negotiations process. However, a major share of the responsibility for the ultimate success of the negotiated document falls upon the first level supervisor.

Who are the first-level supervisors in a school district? Where is the first-level supervisor located? What are some of the supervising activities? The following list gives an overview of the most common factors used in identifying first-level supervisors.

1) Does he supervise one or more employees?

2) Does he hire or participate in the hiring process in a meaningful way?

3) Does he deal significantly with promotions and transfers?

4) Is he paid more than other employees?

5) Does he attend management meetings?

6) Does he help decide who shall be fired, laid off or demoted?

7) Does he handle grievances for management?

8) Does he have power to excuse or punish tardiness or absence?

9) Can he issue disciplinary warnings?

10) Does he spend most of his time watching and teaching other employees as opposed to doing the work?

11) Does he wear clothing different from other employees?

12) Does he have special privileges such as exemption from signing in or punching a time clock?

13) Does he have salaried status?

14) Does he have an office?

ROLE OF THE FIRST-LEVEL SUPERVISOR ON THE EDUCATION MANAGEMENT TEAM

THE FIRST-LEVEL SUPERVISOR IS THE:

- Communicator of Education Policies, Obtaining Employee Acceptance and Identification of District Goals
- Day-To-Day Agreement Administrator, Implementing the Written Agreement Between the Parties
- Key Education Management Team Member in Resolution of Day-To-Day Work Site Employee-Management Conflicts, Grievances and Problems
- Important Contact of Management in Obtaining Information About and Insights into Employee Feelings, Attitudes and Behavior Accomplished Through Normal Working Relationships.

## Contract Negotiations

Few first-level supervisors are involved directly in contract negotiations as members of a district's negotiating team. However, there are at least two major reasons why it is important for the supervisor to be acquainted with the process of contract negotiations: (1) It will help in carrying out the key role and function of providing informational support before and during actual contract negotiations; and (2) By understanding the dynamics and outcome of contract negotiations, it will help the supervisor to administer the contract, to interpret and apply it as intended.

## Support in Contract Negotiations

The first-level supervisor must realize that he is in a position to support the negotiating process as soon as employees elect to bargain collectively or upon renewal of a contract. Actually, there is no "conclusion" to planning and preparations for contract negotiation.

The first-level supervisor is the member of the management team closest to each employee. He learns rumors concerning union proposals and demands. He may often be in a position to ferret out the "real" issues. He is in a position to judge the temper of the employees. Unresolved problems and complaints frequently turn up as union contract demands. The supervisor's ability to identify and report those problems which have not been resolved helps the negotiating team anticipate union proposals.

The first-level supervisor can be a key person in assessing the implications and effects of union proposals and contract clauses. He is in a unique position to render a different perspective than the other management team members. Being in the "activity" arena, he can be more pragmatic and his counsel may prevent future problems.

## Conduct of the First-Level Supervisor

The first-level supervisor is where the action is. This is where the "activity" part of a contract is implemented. Once negotiated, the salary provisions of a contract are cast in concrete. Once negotiated, the vacation policy, holidays and sick day policy of a contract are set with clear parameters. Once negotiated, insurance programs become programmed into the lives of every employee.

However, the items that are not as well-defined become the subject of interpretation and implementation. Many of these must be interpreted or decided by the first-level supervisor. All of the time spent in extensive preparation for negotiations, careful drafting of contract language and wide and thorough dissemination of explanations of the interpretation and application of a new agreement may go down the drain by the poor day-to-day administration of the contract by a first-level supervisor.

The first-level supervisor represents the district's labor relations policies to the employees and their representatives. To many employees, the first-level supervisor in "the district". Their opinions of the supervisor may be a reflection of their opinions of the entire district, as he may be the only representative of the district who is encountered during their course of employment.

The first-level supervisor must act as though nothing were occurring during negotiations. He should retain this "business as usual" attitude in all relationships with the staff. While keeping ears open he should not get into any discussions regarding items or issues that are being negotiated.

The first-level supervisor must implement changes with firmness and promptness when they are his responsibility. The following selection will serve to illustrate this implementation. School District A has permitted secretaries to work a one hour shorter work day when school was closed for vacation periods. A new contract resulted in the work day being expanded for one hour over the normal work day during these vacation periods. The first-level supervisor therefore, must insist that the secretarial staff work the new expanded working hours on the first vacation day affecting them. Allowing them to continue to work shorter hours during scheduled school closings would sham the negotiations process. The first-level supervisor must willingly accept the provisions of the new contract even though he may personally object to them.

A begrudging attitude in accepting contract provisions may result in strengthening the effectiveness of the union. For example, the supervisor of the bus mechanics may dislike the fact that the district now privides uniforms for mechanics. He may air his feelings by stating, "When I was a mechanic, we always had to provide and wash our own clothes." This would indicate to the mechanics that the union really had enhanced their plight.

The first-level supervisor must always outwardly give the impression that he is a "district person". Any personal disagreements with the district must not be reflected during interpersonal relationships with employees. The supervisor must not overextend any privileges or benefits to employees in an effort to obtain revenue against the employer.

The first-lever supervisor must always attempt to be fair in making all decisions. He must also be calm and not overly reactive when confronted with a decision or problem. Many times a change in working conditions or whatever is presenting the problem may be an entirely new concept and this ability to keep a level temperament is most important. The supervisor also must be ever-concise that it is easier to anticipate and correct potential problems rather than assuming the defensive in the role of problem-solving.

The following checklist may serve as a guide to evaluating the strengths and/or weaknesses of the first-level supervisor.

1) He treats employees fairly.

2) He strives to obtain the cooperation of employees and the "steward" or "union representative" by showing a willingness to cooperate in solving issues and problems.

3) He works with the union leaders to informally confront an employee who violates various rules and policies.

4) He works diligently to obtain all of the facts related to a grievance, gives the employee a chance to air his complaints and responds in a timely manner.

5) He does not promise to change a working condition or policy over which he has no control.

Should a supervisor be lax in one of these areas, it is incumbent upon management to provide the necessary training to turn a deficit into a strength.

At this point, it may be valuable to expand upon the role of the first-level supervisor in two important areas: the strike and the grievance.

## Strike

Prior to any strike, all management personnel take on additional duties and responsibilities. The first-level supervisor should continue to perform duties in a business-like manner. By doing this the impression can be conveyed that management is prepared and not overly concerned about an impending strike.

Management must have lines of communication established for the first-level supervisor. He must know whom to call for direction and be confident that the facts he receives are accurate. The supervisor, because of his unique position, must be adequately trained to handle any pre-strike incidents.

After a strike has ended, the first-level supervisor will play a key role in helping the operation return to normal. He is the key person; especially when the strike has left some animosity, in conveying management's attitude that harmony and cooperation need to be achieved. The following actions should be taken by the supervisor:

1) When possible, avoid discussing a strike with employees. This eliminates the possibility of accusations and having to say who was "right" or "wrong" during the strike.

2) Be aware of possible conflicts between strikers and non-strikers. Do not allow cliques to form which exclude one group or another. Plan activities that utilize the whole staff rather than any one group. Above all, do not show any type of favortism to non-strikers.

3) Make it a point to personally welcome each employee back to work.

4) Do not be too quick to criticize employees for the first several days that they are back to work. It will take some time for employees to adjust to what may have become an unfamiliar routine.

5) Study the new contract carefully. Review new and/or revised contractual language with the management team to determine impact upon daily procedures and working conditions.

A first-level supervisor who is aware of employee needs and management goals is a catalyst who can improve management/labor relations and reduce conflict.

## Grievance

Almost all contract have, as the initial step in an organized procedure, the first-level supervisor as the recipient of a grievance. This is a natural progression since most grievances arise, and are resolved, at the level of the first-level supervisor.

Grievances usually result because either the first-level supervisor or the employee misinterpreted some provision of a contract. The dispute may arise when the supervisor directs an employee to perform some task that the individual feels is beyond his particular scope of job responsibility. A limited list of possible causes, directly controllable at the first level, follows:

1) Unsafe working conditions.

2) Giving orders without any explanation.

3) Favoritism.

4) Unequal distribution of overtime opportunities.

5) Ignoring complaints from employees.

6) Lack of sympathy by the supervisor for employee problems.

7) A tradition of not promoting from within.

8) Having unnecessary rules and regulations.

9) Use of threats which, because of their irrationality, cannot be implemented.

10) Disciplining an employee in front of fellow employees.

11) Assigning tasks to employees who do not have the skills to complete the job successfully.

12) Unequal pay for performing identical jobs.

13) Breaking promises or making promises that cannot be kept.

14) Reducing pay without providing prior notification.

15) Use of profane or abusive language.

While this list is far from complete, it should be used as a starting point in identifying the causes of grievances. Once a grievance is filed, the first-level supervisor becomes, in the eyes of the employee organization, management's spokesperson. The manner in which he handles the grievance can set the tone for any additional processing. Some assumptions that one must accept concerning the first-level supervisor are that he:

1) Is the best person to judge the validity of a grievance;

2) Can take immediate action to settle a grievance (if the relief requested is within the supervisor's authority to grant); and

3) Can develop better rapport with employees if an issue can be

resolved without going to a higher authority.

Once a grievance is filed, the supervisor should take time to study the issues and inform management that a grievance has been filed. Since most grievance procedures allow several days for the supervisor to respond, time is available to review the why and how of the grievance and how it developed. The supervisor should:

1) View the grievance as legitimate and sincere unless, after investigation, it is found to be otherwise.

2) Look at the issue from the other side. Is there some possible way the union's views are reasonable and correct?

3) Get the accurate facts about the incident giving rise to the grievance. Discuss the allegation with the affected parties and keep accurate notes.

4) Bring the people and/or the "steward" involved in to discuss the grievance. Do not argue -- discuss. Ask the employee representative to state his case and listen attentively. Check the facts presented here to the fact gathered earlier for accuracy.

5) Avoid making snap decisions.

6) Keep in mind that if, during the idscussion, both parties find they have a "gripe" rather than a grievance, diplomacy can carry you a long way. By allowing the employee representative a way to graciously withdraw the grievance, you help to create a better working relationship for any future grievances.

7) Be willing to admit a mistake. If during the fact gathering process the supervisor determines that he made a mistake, initiate a meeting immediately, admit the mistake and take corrective action.

8) Be careful of "passing the busk". A supervisor who's response is "I con't do anything about it; it's the brasses' decision," loses the respect of those he supervises and, in time, the support of upper management. If the issue is beyond his authority to resolve, management should be consulted and an appropriate course of action planned that will allow the supervisor to respond to the grievance.

Throughout this brief discussion of the supervisor's role during strikes and grievances, several guidelines and checklists have been presented. They may be used as a management tool to either determine the effectiveness of the supervisor or to plan future training programs. The latter is perhaps the most important and will have the greatest long-term impact on the educational organization. The first-level supervisor, whether of professional or support staff, has the capability to reduce the number of grievances filed, improve morale, create positive attitudes toward management and solve minor problems before they become district-wide issues. Management should capitalize on this potential by encouraging first line supervisors to participate in various training programs and to reward the successful supervisor.

Figure I lists some key points for the first-level supervisor to utilize during the grievance procedure.

FIGURE I

KEY POINTS FOR FIRST-LEVEL SUPERVISORS IN GRIEVANCE HANDLING

| | |
|---|---|
| Grievance Presented | Listen carefully and study the facts presented by the union. Ask questions to clarify the issue. |
| Fact Gathering | Review the facts surrounding the issue. Interview appropriate personnel, review contract, study past practice, discuss with other management personnel. |
| Decision | Meet with union. State your case clearly with the goal of convincing the union to withdraw its grievance. You may have to:<br>1) Compromise - both sides give a little to reach an agreement.<br>2) Integrate - both parties interpretations accepted and a new set of procedures are defined.<br>3) Concede - admit you were wrong.<br>4) Reject - the grievance completely. This forces the union to decide if they want to proceed any further in the grievance procedure. |

Figure II presents a "fact-gathering sheet" that is an example of one that may be used by the first-level supervisor as part of the second step in the grievance procedure. Such a sheet helps the supervisor retain accurate notes on those interviewed, study of the contract and past practice, and discussions with other management.

### Summary

In conclusion, let it again be emphasized that the first level supervisor plays a key role in the ultimate success or failure of the negotiation process. A summary of the major roles might be as follows:

1) Day-to-day contract administrator, implementing the negotiation agreement.

## FIGURE II

## FACT-GATHERING SHEET (SAMPLE)

Name of Grievant____________________________________Position______________

Date of Hire__________________________

Who is involved? (witnesses)

When did it happen? (dates and time)

Where did it happen? (location - one or more)

What Happened? (Grievant's statement, witnesses, background information. Information here should include notes of discussions, documents, etc.)

Why is this a grievance? (Specific sections of the contract should be cited here. This may come from the original grievance document.)

What remedy? (This can also come from the grievance document.)

2) Key management team member in resolution of everyday work site employee-management conflicts and problems.

3) Eyes and ears of management in obtaining information about and insights into employee feelings, attitudes and behavior accomplished through normal working relationships.

4) Communicator of management policies obtaining employee acceptance and identification with management and district goals.

## Chapter 14

# NEGOTIATING MERIT PAY PROVISIONS FOR ADMINISTRATORS

By Dr. Dwayne C. Poll

For over 60 years, merit pay plans have been alternately praised and condemned by school districts throughout the United States. In fact, some state legislatures even funded pilot programs involving merit pay. Some school districts have been involved in merit pay programs in the past, but with the advent of collective bargaining, have discontinued them. Still other districts currently use some form of merit incentive; while numerous districts are interested in studying in depth this issue.

The concept of paying school district personnel on the basis of their performance has been vigorously debated and written about under such terminology as "merit pay", " career increments", "quality of performance pay" and "differential salaries" to name just a few. However, current data on the extent to which merit pay and incentives have actually been negotiated in contracts with educational administrators have not been available. Therefore, the purpose of this chapter is to outline the history of merit pay plans and to offer suggestions on the procedures which may be utilized in negotiating such merit pay provisions in individual school districts. The writer hopes that the presentation of research and the practical experience gained in his school district will prove helpful to others.

## Literature Relative to Merit Pay[1]

This review of the literature relative to merit pay concerns itself with definitions of merit pay, the advantages and disadvantages of merit pay, the causes for the success or failure of merit pay plans and the public opinion about merit pay.

The term "merit pay" has been used interchangeable with many other terms. Regardless of the term used the meanings do not differ significantly.

Templeton states that "... merit pay means paying a teacher (administrator) according to the quality of his (or her) teaching. In practice, however, programs range from vague statements allowing school boards to exceed regular pay schedules under some conditions to programs in which all teachers and administrators are paid according to an evaluation rating."[2]

Davis defines "merit pay rating" as a "...recorded judgment about a teacher which determines, at least in part, the amount of his (or her) salary and may affect the rate of salary progress or ultimate maximum."[3]

The Research Division of the National Education Association has coined the phrase "quality-of-service-recognition" defining it as "any device that adjusts salaries to recognize different levels of teaching performance."[4] Therefore a merit pay plan is "any salary schedule...whatever its plan of recognizing position, experience and preparation may be, if it either authorizes or specifies salaries above the regular schedule to reward teachers who have been judged to be rendering superior service."[5]

Merit rating has been defined by the California Teachers Association in terms of its usage in business and industry. This association says that merit rating "as used in business and industry, .... refers to processes very similar to the 'evaluation procedures' used by most school districts."[6] Whenever an evaluation is utilized as the basis for determining an employee's pay, then it can be termed a merit pay plan. The business and industry merit pay plan would be defined as follows:

> "Merit rating is a systematic method of evaluating employee performance for the following purposes:
>
> 1) to help determine promotions, tranfers, demotions, dismissals, and salaries.
>
> 2) to provide an analysis of strong and weak points so that employees' performance may be improved through a guidance program; and
>
> 3) to provide the personnel division with a yardstick to measure the effectiveness of testing, recruiting, and in-service training programs."[7]

Templeton noted that merit pay programs are likely to differ widely from school district to school district. One can, however, identify three major types of merit pay plans:

1) Those in which authority to exceed the salary schedule due to superior service is vested in the board of education. Normally such blanket authority statements do not contain details of implementation.

2) Those programs in which superior teachers progress at an accelerated rate on the regular salary schedule, however, these teachers do not usually exceed at any time the salary schedule maximum.

3) Other merit plans contain provisions for exceeding the maximum on the salary schedule by fixed dollar amounts.[8]

The New York State Teachers Association has identified four types of merit plans.

1) A formal evaluation procedure with a weighted point scale.

2) A formal evaluation procedure with an unweighted point scale.

3) A formal evaluation procedure with no point scale.

4) A plan utilizing a recommendation by the superintendent but no formal evaluation procedure.[9]

Stoops, et. al., have identified seven forms taken by merit pay plans.

1) Super-maximums,

2) Accelerated increments,

3) Bonus plans,

4) Multiple track,

5) Periodic merit evaluation,

6) Annual outstanding teacher awards, and

7) Summer merit teacher projects program.[10]

Lastly, Bhaerman speaks of "old style" and "new style" merit plans. He identifies "old style" plans as those involving ratings based on input factors such as personal fitness, classroom management, attitude and so on, while "new style" plans are based on ratings using output factors focusing on the attainment of specific goals and objectives.[11]

It is this new style of merit pay as further defined by Flippo and Munsinger[12] which should be carefully considered in a district's negotiations of merit pay for administrators. Thus, following these writers' definition, the negotiated merit plans would emphasize the employee's contribution in terms of quality and quantity or work and the assumption of responsibility rather than considering employee characteristics.

The proponents and opponents of merit pay can cite numerous advantages and disadvantages to support their point of view. The school district's chief negotiator should be aware of these as the negotiations process is being initiated. The writer, having been both a recipient of and a negotiator for an administrators merit pay plan, believes the following list of advantages and disadvantages, while not all-inclusive, at least touches upon the major points that are likely to be broached.

Advantages

1) Administrators should be paid according to their worth and should be known to be of this worth.

2) A merit pay plan is not only sound but also logical and should form the basis for the development of salary schedules.

3) There must be a monetary incentive for quality performance since such incentive spurs additional productivity.

4) The public demands dividends for its tax dollars and merit pay will cause the public to support higher salaries.

5) Merit pay will attract and hold administrators of superior quality since such administrators will be able to earn salaries in proportion to their efforts.

6) Administrators are already being rated by students, teachers, superintendents and the public so there is no compelling reason to preclude rating for salary.

7) Merit plans demand high quality work which in turn benefits the end product of the educational system - the student.

8) Merit pay is a stimulus for the administrator to work up to his capacity as he is adequately rewarded for his productivity.

9) Merit pay removes the inequality of treating unequals equally.

10) Merit pay will give security to those who are high performers rather than giving security to the inefficient.

11) The merit concept offers opportunity for the development of cooperative and democratic relationships.

12) Competent supervisors can make evaluations for merit which contain few, if any, inequalities.

13) Business and industry have used merit pay with excellent results. Educators should be able to modify the business and industrial practices to meet the needs of the educational area thereby improving the quality of education.

14) Less than 100% success in the first attempt at merit pay should not preclude the use and improvement of such programs.

15) Administrators should at least be willing to study and experiment with merit plans.

16) Merit pay will create conditions more like the prevailing ones in other professions where status and income are dependent upon ability, industry and competence.

17) Merit pay will serve to assist in the retention of excellent administrators at all levels of administration.[13]

Disadvantages

1) Merit pay for educators has been tried for many years and not a single program has been successful.

2) Boards of education have no objective, accurate method of judging administrative competence.

3) Merit pay provisions will cause administrators to be competitive, uncooperative and of poor attitudes rather than serving as constructive members of the administrative team.

4) The time required for supervision, evaluation and report writing is not warranted when one considers the meager benefits to be derived from such a program.

5) Merit provisions for salary will cause all administrators to perform equally rather than utilizing individual, creative abilities.

6) Proper supervision requires that persons be assisted to improve to the full extent of their capacities rather than being penalized for unsatisfactory work.

7) Merit pay will cause lack of cooperation between supervisor and supervisee and will also increase the individual administrator's work load.

8) Raising the general level of administrative ability through in-service training is more beneficial than merit pay.

9) Merit pay is too often based on "quantity" of work instead of "quality".

10) Industry, with rare exceptions, has given up merit pay provisions and is concentrating on the betterment of working conditions to gain additional productivity.

11) Sixty years of experience has shown that merit pay programs are soon rejected by the public.

12) Administrators are representative of a cross section of ability. In view of this ability difference, merit pay is unfair.

13) The majority of administrators do not currently favor merit pay.

14) Merit pay will create administrative "apple-polishing".

15) Merit pay creates feelings of insecurity, increases worry and tension and isolates administrators.

16) Merit pay will create public relations problems since parents will not like their children attending a school headed by a non-merit administrator.[14]

Why do merit pay plans succeed or fail? The literature is replete with reasons on either side of the issue. Several of the more worthwhile ideas regarding the success or failure of merit pay plans are noted below.

Merit pay will be successful if:

1) The most important objective is to improve the administrator's performance;

2) Every administrator is considered eligible based on recognized predetermined standards;

3) Administrators are judged by productivity as measured against innate ability as opposed to comparison with other administrators;

4) The evaluators are competent and impartial; and

5) Sufficient money is provided to carry out the intent of the program.[15]

Probably the most important factor which guarantees the success of a merit program is the leadership provided by the chief school officer. The chief school officer must create an atmosphere of confidence, respect, honesty and trust among all parties involved in such a plan.

Rhodes[16] has noted a number of factors that were present in each of the unsuccessful merit programs that have been reviewed. These were:

1) Insufficient discrimination between recipients and non-recipients.

2) Limitations on the number of qualified persons who could receive merit stipends.

3) Poor evaluators.

4) Problems created by uninformed board members.

5) Goals were not clearly defined.

6) Lack of job descriptions or poorly constructed job descriptions.

7) No priorities have been clearly defined.

8) Cooperative development of an effective evaluation tool has been neglected.

9) Basing decisions on the way an administrator acts rather than on results he produces.

10) Evaluations are not translated into improvement.

11) Lack of financial incentive. Small merit stipends are not enough to stimulate increased productivity.

Opinion polls clearly indicate the conflicting viewpoints held by both educators and the public on the issue of merit pay. Rometo[17] surveyed a number of school districts in Pennsylvania to determine attitudes toward merit pay. Generally, the respondents indicated a willingness to devise and implement a merit pay plan. However less than 50% of the teachers and 66% of the administrators believed that a merit pay plan would be successful in their district.

Reiels[18] conducted a survey of teachers in Wisconsin regarding merit, using two survey instruments. Analysis of the data for the various faculty grouping showed that certain personal factors, particularly those related to teaching assignments, affected the individual's attitude toward merit. These feelings toward merit were seen to vary from one faculty group to another and from one merit pay problem to another.

Michael[19] conducted a study, the data of which supported the following two hypotheses:

1) Teachers agree more strongly with statements against merit pay than with statements supporting merit pay.

2) A teacher's attitude toward merit rating is influenced specifically by his own acceptance or rejection of the general merit rating philosophy.

## Setting the Stage for Negotiations

One of the prime factors leading to a successful merit pay program is the leadership provided by the chief school officer. What style of leadership is most likely to affect the successful implementation of merit pay provisions? Herein lies the crux of the problem. Management theorists have cited tasks and relationships as the two most important dimensions of leadership.[20] Close analysis of these two dimensions shows that any differences are more semantic than real. However, the results of the Ohio State Leadership Studies led some leadership theorists to suggest that there is a "best style" of leadership. Most of the theorists suggest that the most effective leader is one with an integrated behavior style or a permissive, democratic, human relations approach.

Halpin, one of the members of the original Ohio State staff, in studying the leadership styles of chief school officers noted that "effective or desirable leadership behavior is characterized by high ratings on both Initiating Structure and Consideration. Conversely, ineffective or undesirable leadership behavior is marked by low ratings on both dimensions."[21]

Korman[22] reviewed more than 25 leadership studies. His work gives compelling evidence that there is no one "best" style of leadership. He concluded that:

> "Despite the fact that 'Consideration' and 'Initiating Structure' have become almost by-words in American industrial psychology, it seems apparent that very little is now known as to how these variables may predict work group performance and the conditions which affect such predictions. At the current time, we cannot even say whether they have any predictive siginificance at all."

His conclusions seem to suggest that leadership is situational, i.e., it varies according to the needs of particular situations. His conclusions are further verified by Fiedler[23] who, in a review of 50 studies spanning 15 years, concluded that both directive-task oriented leaders and non-directive, human relations directed leaders are successful in particular situations.

It would seem then that the chief school administrator who is responsible for the implementation of contractual merit pay provisions must be adept at changing his leadership style to meet the needs of his subordinate administrators and the particular situation of a given time. The superintendent's effectiveness as a leader will be dependent upon his ability to diagnose his own leader behavior in terms of the organization, superiors, associates, subordinates and job demands. The superintendent must trust his subordinates and believe in their honesty, integrity and maturity. Anything less can only result in dissatisfaction, mistrust and the eventual demise of the merit program.

The initial and most important step in planning a merit pay program is the development of a comprehensive job description for each administrative position within the district, i.e., elementary school principal, secondary school principal, director of pupil personnel and so forth. This development of job descriptions should involve the total administrative team including principals, directors, central office administrators and the chief school officer. While the members of the board of education will not be directly involved in this phase of the merit plan, the chief school officer should keep them appraised of the progress through interim reports.

In analyzing the responsibilities and functions of the various administrative posts, the team should consider the following general and specific criteria:

1) Know-How
    a) What specialized knowledge is required for each administrative position?
    b) How complex are the management demands of each position?
    c) What level of face-to-face human relations is required?
2) Problem-Solving
    a) What kinds of solutions must be provided for problems?
    b) What types of constraints are placed on the individual administrators in the development of solutions?
3) Accountability
    a) To what extend is the administrator responsible for his decisions?
    b) What magnitude of impact does his decision-making actually have?
    c) Based on school district size, what is the scope of his decision?[24]

When the various job descriptions have been completed and approved by the members of the administrative team, they should be presented to the board of education for its approval. In this writer's district, this step took place a full year in advance of any formal negotiations with the administrative bargaining unit. An example of the job description for an elementary school principal is shown in Figure I.

The reader should be aware that the elementary school principal's job description shown in Figure I is only a model. It will, of course, need revision and refinement to meet the demands of an individual school district.

Figure II is included as an illustrative model of the items which might be included in a job description for a school business official. Again, this is a model that will need adjustment to fit the tasks and requirements demanded by individual school districts' policies and practices.

A word of caution: there are pitfalls in carte blanche adoption of a model for actual district use. Good practice dictates that each school district complete a detailed study of goals, policies, procedures and job requirements before writing a job description.

FIGURE I

## ELEMENTARY SCHOOL PRINCIPAL'S JOB DESCRIPTION

DATE:____________________________

NAME________________________________ SCHOOL____________________________

1) Assumes the responsibility for the implementation and observance of all Board policies and regulations.

2) Continually assesses the curricular and instructional program facilities and materials for appropriateness to student needs and effectiveness in satisfying those needs.

3) Makes recommendations for additions and deletions to the curriculum and instructional program to the Assistant Superintendent for Instruction.

4) Evaluates individual members of the teaching staff and submits reports on said evaluations to the Assistant Superintendent for Instruction.

5) Assists in the selection of teachers.

6) Makes recommendations for the retention and dismissal of teachers.

7) Orients new teachers to the educational program offered in the district and the specifically assigned school.

8) Conducts demonstration teaching.

9) Coordinates and stimulates the professional reading habits of the staff at the assigned school (to include editorial, research and program description articles and books).

10) Develops the school budget in concert with the Assistant Superintendent for Instruction.

11) Orders instructional and non-instructional supplies and materials.

12) Organizes and plans for registration of new pupils.

13) Organizes and manages clerical procedures.

14) Organizes and supervises maintenance of buildings and grounds, fire drills, bus drills and safety inspections.

15) Organizes and supervises teaching personnel.

16) Organizes and supervises the school lunch program.

FIGURE I - Continued

17) Schedules school activities.

18) Designs formats for records and reports.

19) Updates reports and records.

20) Coordinates and supervises special services provided by the district, such as guidance, health, speech, reading, psychology and attendance.

21) Coordinates the district's testing program at the assigned school.

22) Handles disciplinary and grievance proceedings.

23) Consults and advises the Assistant Superintendent for Instruction and the Superintendent of Schools in regard to contract negotiations.

24) Maintains clear, specific and concise records of his activities.

25) Orients the respective community to the staff and educational programs (report system, curriculum and instructional programs, discipline policies and the like.) offered at the assigned school.

26) Maintains a systematic two-way communication system with the community.

27) Plans, organizes and administers educational and interactive programs and workshops for parents.

SUPERINTENDENT

INCUMBENT

## FIGURE II

## SCHOOL BUSINESS OFFICIAL'S JOB DESCRIPTION

DATE: ____________________

NAME: ________________________ DISTRICT: ____________________

1) Assumes responsibility for the implementation and observance of all board policies and regulations for the district.

2) Assumes responsibility for updating and preparing current additions to the written policies, bylaws and regulations for the district.

3) Assumes responsibility for budget development and long range financial planning.

4) Assumes responsibility for accounting procedure adequate to record in detail all money and credit transactions.

5) Supervises the collection, safekeeping and distribution of all funds.

6) Develops and administers a plan for purchasing all supplies and equipment in keeping with the district budget.

7) Supervises the storage and distribution of supplies and equipment.

8) Administer, through the Director of Maintenance, the operation and maintenance of the school plant.

9) Supervises school transportation services.

10) Supervises all business office personnel including Business Manager, Payroll Director and others.

11) Arranges for the internal auditing of school accounts.

12) Maintains an updated inventory of school property.

13) Is responsible for supervision and maintenance of eligibility for all civil service employees.

14) Is responsible for preparing and submitting to the Board of Education such financial reports as it should request.

15) Is responsible for compiling the necessary statistical data for preparation of the fiscal budget.

16) Prepares financial reports as required by State and Federal agencies having jurisdiction over school funds.

FIGURE II - Continued

17) Completes applications for State and Federal funds.

18) Acts as an advisor to the Superintendent of Schools on the school budget and all other business and financial questions.

19) Acts as an advisor in contract negotiations with all negotiating groups.

20) Is responsible for the preparation and submission of all bids and service contracts.

21) Provides an in-service training program for business personnel.

22) Interprets the financial position of the District to the community at large.

23) Supervises the data processing storage and generation of such information as should be requested by the Superintendent and/or the Board of Education.

24) Is responsible for managing the district's real estate and insurance programs.

25) Is responsible for developing and maintaining the district's census.

26) Is responsible for maintaining attendance program.

27) Is responsible for determining legal eligibility of students' residences.

28) Is responsible for preparing enrollment projections.

29) Accepts such other duties and assignments as the Superintendent of Schools may direct.

30) Assumes the role of Acting Superintendent in the absence of the Superintendent of Schools.

31) Keeps current with educational developments and the literature in the field of school business affairs and participates in state and national professional societies devoted to the advancement of

(Figure II continues on page 189)

## FIGURE II - Continued

school business affairs.

32) Is responsible for developing and supervising a program of external and internal security for District schools.

| SUPERINTENDENT | INCUMBENT |
|---|---|

The second step taken by the writer's district prior to entering into any negotiations relative to merit pay was to train its administrators in the use of "management by objectives" (MBO). This training showed the advantages of converting from the "open-looped" [25] to a "closed-loop"[26] system of educational administration.

The efficicy of the MBO concept is generally manifested via a "contract" between the supervisor and the person being supervised. Although contracts take many forms, each generally includes statements of behavioral objective(s), milestones and completion dates, a description of the monitoring system for assessing progress and statements regarding requirements the one who is supervised may have in order to accomplish the objectives.

In essence, the contract states the specific objective to be accomplished. Then specific objectives are known, resources can be appropriately allocated, personnel assignments can be made and the system can be evaluated according to its progress toward the objective(s). It can be placed back on course if that is required.

MBO has its base in business and industry and therefore is sometimes viewed negatively by administrators. The reasons given by those "turned off" by this approach is that techniques used in business and industry cannot be appropriate for the profession dedicated to the growth and development of people. This reasoning is invalid in at least two respects.

1) Management by Objectives is directed toward people and the way they work rather than at things. It is not a technique resembling mass production, nor does it validly allow for the "factory analogy." Instead MBO is the most individualized management technique currently available.

2) Contrary to popular opinion, employees at the management level in business do not work with isolated bits and pieces of matter that can be easily quantified. Their responsibilities are every bit as complex as those of educators.

Besides being a technique, MBO is a philosophy. As such it is based on several assumptions about people, supervision and evaluation.[27] Those assumptions are as follows:

1) Evaluation systems that are primarily designed to find the "bad apples" in the system or "to cut out the dead wood" are counter productive. Such an orientation too often equates NOT DOING SOMETHING WRONG with successful management. The focus rather should be on showing CONTINUAL GROWTH AND IMPROVEMENT and continually doing things better. It is the responsibility of the organization to develop (allow/encourage to develop) the managers of that organization.

2) Unless a supervisor is working daily in direct contact with an

individual there is no way he can evaluate ALL the things that individual does. At best he can evaluate only a relative few of the things the individual does and then only if these "things" are well defined. This means that priorities must be established so that the MOST IMPORTANT responsibilities are always in focus.

3) Lack of defined priorities results in a dissipation of resources. If "everything" is equal, a person tends to be guided by his own interests or the situation at hand.

4) Supervision is not a passive activity; i.e., a supervisor must not only be a "scorekeeper." A supervisor must be actively involved in helping subordinates achieve objectives and CONTINUALLY grow in competence. This development of subordinates is probably the MOST IMPORTANT of supervising managerial functions.

5) Subordinates often perceive the priority of their responsibilities in ways that differ from the supervisor or the organization. Unless the two are harmonized, the subordinate may be growing and developing in his own perceptions but not in the perceptions of the organization. Where the perceptions and priorities of the subordinate and the organization are the same or close, the result is positive and productive. Where perceptions differ, the results are non-productive and one or the other must change.

6) Continuous "hard-nosed" dialog between supervisor and manager concerning agreed upon priorities are both productive to the efficiency of the organization and to the psychological/emotional well-being of the individual.

Never should MBO Performance Agreements be imposed from the top down, nor whould they be pulled from thin air. They should, instead, be based on needs derived through systematic procedures and agreed upon by both the supervisor and the supervised. Agreement between both parties is crucial to the success of the program.

After the parties have agreed on the priorities, the Performance Agreement can be written. Figure III is an example of a Performance Agreement.

The sample Performance Agreement (PA) in Figure III consists of five sections: behaviorial objectives; classification; procedures; monitoring; and requirements.

A description of each of the sections in the PA follows:

1) Performance Objective:

Behavioral statements of objectives with performance standards are obviously the backbone of the PA. The guidance given by the performance objective gives direction to administrative and other district energies. A statement of the conditions and performance standard elements in a PA are often contained in the procedures section for a detailed description of the conditions and performance standards.

2) Classification:

Two criteria are used for classification of an objective. The first criteria is length of term. Is the objective long term (one or more years), mid-term (six months to a year), short term (six months or less)? This criterion is important for budgeting and planning purposes. The second criterion involves the nature of the objective. One assumes that routine tasks must always be performed in order to maintain the system while new and creative objectives must be implemented to insure progress. Also, the organization is concerned with the growth of its employees, therefore personal or professional categories have been included.

3) Procedures:

After stating the objective, specific steps or procedures for attaining the objective must be planned. This is divided into five parts:

(a) Milestones - specific benchmarks or checkpoints designed to keep the one who is supervised on the track.

(b) Person responsible - identifies the person responsible for completing the milestone.

(c) Completion date - represents the specific time agreed upon by all concerned parties for completing the milestone.

(d) Date completed - this shows the actual date on which the specific milestone was finished.

(e) Documentation - gives the person responsible and the supervisor a space to list the specific means utilized to document the completion of the milestone.

4) Monitoring:

This implies a series of conferences designed so that the supervisor and the supervised will be able to evaluate the progress toward completion of the objective. Specific dates for each conference must be scheduled and diligently adhered to.

FIGURE III

## PERFORMANCE AGREEMENT

OBJECTIVE: 1.0 Implement the Wisconsin Design Reading, Math and Study Skills Program in all elementary schools for the district.

Classification: 1.3 Long Term 1.32 New or Creative

| PROCEDURES | | | | | |
|---|---|---|---|---|---|
| CODE | MILESTONES | PERSON RESPONSIBLE | COMPLETION DATE | DATE COMPLETED | DOCUMENTATION |
| 1.32.01 | Update the "Resource Files" for the Comprehension Strand of the Wisconsin Design. | D. Poll | 9/30/77 | | |
| 1.32.02 | Order the Wisconsin Design "Work Attact" materials for all elementary schools | D. Poll | 11/30/77 | | |
| 1.32.03 | Distribute the materials noted in 1.32.02 to all elementary schools. | D. Poll | 1/30/78 | | |
| 1.32.04 | Develop budget requests relative to Wisconsin Design "Word Attach Strand."<br>a) additional materials<br>b) money for test correction and preparation of initial record card. | D. Poll | 1/30/78 | | |
| 1.32.05 | Establish test dates for kindergarten students for "Comprehension" and "Work Attack." | D. Poll | 4/15/78 | | |
| 1.32.06 | Print the district record card for "Comprehension." | D. Poll | 4/20/78 | | |
| 1.32.07 | Design and print the district record card for "Work Attack Skills." | D. Poll | 4/30/78 | | |
| 1.32.08 | Conduct a "Work Attack Analysis Session" to determine need for teacher in-service training relative to this segment of the Wisconsin Design. | D. Poll | 5/1/78 | | |

FIGURE III - Continued

| CODE | MILESTONES | PERSON RESPONSIBLE | COMPLETION DATE | DATE COMPLETED | DOCUMENTATION |
|---|---|---|---|---|---|
| 1.32.09 | Implement the new record keeping procedures for kindergarten students for "Comprehension" and "Word Attack" | D. Poll | 5/1/78 | | |
| 1.32.10 | Assist the elementary school administrators in designing the in-building test and implementation strategies for the "Word Attack" strand. | D. Poll | 6/1/78 | | |
| 1.32.11 | Develop any in-service training activities deemed necessary as a result of 1.32.08. | D. Poll | 7/30/78 | | |
| 1.32.12 | Establish the dates for the pre-testing of all elementary students (grades 1-6) on the "Work Attack" strand. | D. Poll | 8/25/78 | | |
| 1.32.13 | Hire aides to correct tests and prepare record cards. | D. Poll | 9/1/78 | | |
| 1.32.14 | Distribute results of corrected diagnostic pre-tests to all elementary schools. | D. Poll | 10/5/78 | | |
| 1.32.15 | Conduct in-service training as specified in 1.32.11. | D. Poll | 10/5/78 | | |
| 1.32.16 | Review teacher suggestions for instructional materials to be utilized with each objective. | D. Poll | 4/1/79 | | |
| 1.32.17 | Arrive at decision with Superintendent of Schools relative to implementation of math and study skills components. | D. Poll<br>W. Irvin | 4/30/79 | | |
| 1.32.18 | Complete final evaluation of "Word Attack Strand." (1978 vs. 1979 SAT scores on Word Attach Skills.) | D. Poll | 6/30/79 | | |

MONITORING:

1.32.18.1 Monitoring will be accomplished via submission of the reports indicated in milestones 1.32.01; 1.32.02; 1.32.04; 1.32.05; 1.32.06; 1.32.07; 1.32.08; 1.32.10; 1.32.12; 1.32.13; 1.32.17 and 1.32.18.

REQUIREMENTS:

1.32.18.1 Verbal and/or written approval of this objective from the Superintendent of Schools.

1.32.18.1.2 Necessary funding of the objectives as per milestones 1.32.02; 1.32.04; 1.32.11; 1.32.13; and 1.32.17.

5) Requirements:

Many objectives cannot be accomplished without the allocation of additional resources. The supervisor and the supervises must jointly determine the necessary level of additional funding. The supervisor assumes then the responsibility for providing the materials or resources.

The third and final factor in setting the stage for the negotiation of merit pay provisions involves the awarding of merit bonuses prior to the actual contractual agreement. In the writer's district, the contract which was in existence for administrators prior to the negotiation of a merit pay did permit the board of education to award merit bonuses to any administrator whose performance in the judgment of the board of education was exemplary. Such merit awards were, in fact, given. While the awards were praised by administrators, the board was also criticized for making such merit awards without pre-established, specific guidelines. Caution should be exercised if this approach is to be utilized. A negative experience at this point of the timeline may result in severe criticism of proposals submitted for future negotiations.

### Developing District Proposals

Prior to defining the actual proposals relative to merit pay for administrators in the writer's district, it is well to consider two possible approaches to be utilized in the actual negotiations process.[28]

These contrasting approaches can best be termed AROUND THE TABLE CONSULTATION and ACROSS THE TABLE NEGOTIATION. The first is an informal process based on mutual cooperation. The second is more an adversary, give and take process culminating in impasse and fact-finding if agreement is not reached. While most of us would likely choose the former model, the existing laws and philosophy of negotiations often mandate the "across the table" process. The two processes are most aptly defined in Figures IV and V.

In preparing for the negotiations process with administrators, it is not feasible to formulate a step-by-step procedure since school districts will differ widely as a result of state laws. However, the following general questions should be answered before the first across-the-table negotiating session is held.

| BY SUPERINTENDENT AND BOARD | BY ADMINISTRATORS |
|---|---|
| 1) What policies and regulations cover the negotiations? What is the rationale for these negotiations? | 1) How "hard" will the administrators push their demands? |

| BY SUPERINTENDENT AND BOARD | BY ADMINISTRATORS |
|---|---|
| 2) Will the administrators' negotiating unit represent all administrators? | 2) Whom does the administrators' negotiating unit represent? |
| 3) How will the Board treat administrators omitted from the negotiating unit? | 3) Who will compose the negotiating team? Who is to be the chief negotiator? |
| 4) Who will do the actual negotiating? What role will be played by the superintendent, and board members? | 4) Who determines the demands to be presented to the Board's negotiator? |
| 5) What limitations will be placed on the scope of negotiations? Is the scope of negotiations negotiable? | 5) Who will do the research and fact-gathering necessary for support of the administrators demands? |
| 6) What data, financial and otherwise, will be necessary. | 6) What negotiations tactics will be utilized? |
| 7) What negotiating strategies will be utilized? | |

Once these questions were answered by the Board of Education, the writer's district prepared a merit proposal which gave attnetion to the following five goals.

1) Develop the quality of effectiveness of educational leadership necessary for the growth and survival of public education.

2) Attract school administrators whose skills, attitudes, enthusiasm and dedication are above average.

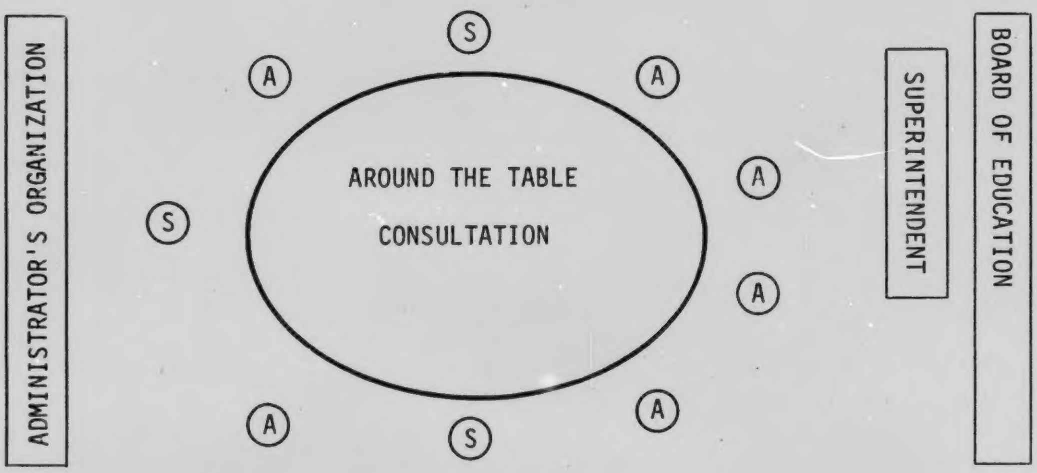
3) Assure the highly qualified administrator that one's salary will be commensurate with one's performance.

4) Provide the administrators with incentive for continued growth and improvement.

5) Provide equitable compensation for administrators at varying levels of competence.

FIGURE IV

COOPERATIVE NEGOTIATIONS


ADMINISTRATOR'S ORGANIZATION
S
A
A
S
AROUND THE TABLE
CONSULTATION
A
A
A
A
S
A
SUPERINTENDENT
BOARD OF EDUCATION

Ⓐ ADMINISTRATOR

Ⓢ SUPERINTENDENT AND ASSISTANT SUPERINTENDENTS

1) Identification of problems and issues.

2) Presentation of evidence and arguments.

3) Give-and-take discussion.

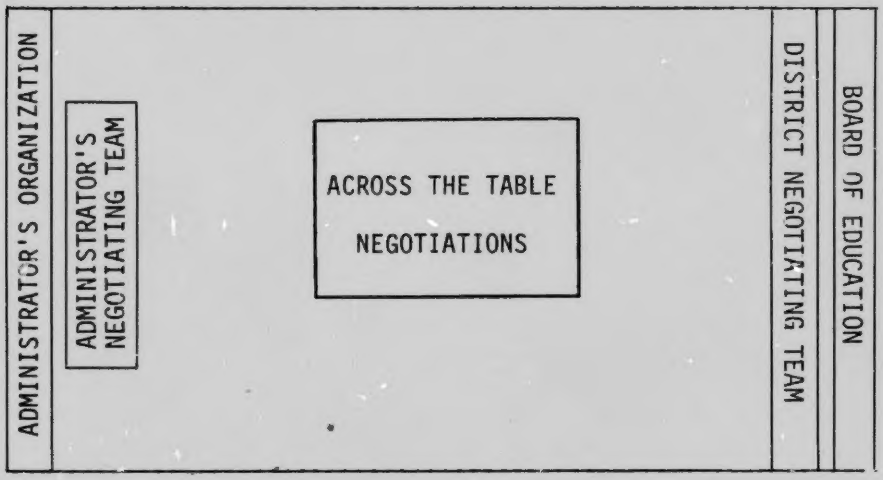
4) Peer-level participation.

5) Reaching consensus.

6) Formulation of recommendations to Board of Education

FIGURE V

ADVERASRY NEGOTIATIONS


ADMINISTRATOR'S ORGANIZATION
ADMINISTRATOR'S NEGOTIATING TEAM
ACROSS THE TABLE NEGOTIATIONS
DISTRICT NEGOTIATING TEAM
BOARD OF EDUCATION

1) Presentation of proposals (demands).
2) Submission of counter-proposals.
3) Pro-and-con arguments.
4) Presentation of evidence and supportive data.
5) Employment of tactics and strategies.
6) Reaching agreement or impasse.
7) Fact-finding.
8) Mediation.
9) Signing an agreement (contract) or resolving the impasse.

## Essential Characteristics

The merit salary proposals for administrators in the writer's district (Uniondale Public Schools) has taken cognizance of the essential characteristics of an evaluation plan. Subjective elements are reduced in recognized ways as follows:

1) A rating scale based on the administrator's job description composes 60% of the total evaluation (See Figure VI).

2) Thirty percent of the evaluation is based on the administrator's completion of three MBO's (Management Objectives - See Figure VII).

3) Ten percent of the evaluation is based on the superintendent's yearly analysis of the administrator's performance.

4) A specific formula is used for translating the evaluations into a dollar amount.

The job descriptions upon which the merit plan is based were developed during the 1973-74 school year with input from the administrators of the district. In the Fall of 1976, all administrators with like job descriptions (for example, all elementary school principals) met under the direction of the Assistant Superintendent for Elementary Education to weigh each item on the job description in terms of its importance using a five-point scale (5, most important; 1, least important). A rating scale to be used quarterly was then developed.

The administrators have been involved in management by objectives since 1973. It was determined that each administrator would be held accountable for three MBO's in the salary plan. The management objectives are reviewed by the administrator's central office superior and must be acceptable to the superintendent before becoming part of the salary plan. The approved MBO's are evaluated yearly.

First, when all the evaluations for a given administrator are completed, the process for arriving at a final yearly rating for assignment of merit as described below is utilized. Each quarterly job description evaluation is worth 15% of the 60%, therefore, the final rating might be indicated as follows:

$$\left.\begin{array}{l} Q_1 = 3 \\ Q_2 = 4 \\ Q_3 = 3 \\ Q_4 = \underline{4} \end{array}\right) \qquad 3.5 \times 6 = 21.0$$

$$\text{Total} = 14 \div 4 = 3.5$$

FIGURE VI

## ELEMENTARY SCHOOL ADMINISTRATOR'S EVALUATION FORM

Date ____________________

Name ________________________________ School ____________________

Rating: (1) Unsatisfactory; (2) Needs improvement;
(3) Satisfactory; (4) Above Average;
(5) Outstanding

| Item | Weight | | Rating | | Total Points |
|---|---|---|---|---|---|
| THE ADMINISTRATOR: | | | | | |
| 1. assumes the responsibility for the implementation and observance of all Board policies and regulations. | ______ | x | ________ | = | _______ |
| 2. continually assesses the curricular and instructional program facilities and materials for appropriateness to student needs and effectiveness in satisfying those needs. | ______ | x | ________ | = | _______ |
| 3. makes recommendations for additions and deletions to the curriculum and instructional program to the Assistant Superintendent for Instruction. | ______ | x | ________ | = | _______ |
| 4. evaluates individual members of the teaching staff and submits reports on said evaluations to the Assistant Superintendent for Instruction. | ______ | x | ________ | = | _______ |
| 5. assists in the selection of teachers. | ______ | x | ________ | = | _______ |
| 6. makes recommendations for the retention and dismissal of teachers. | ______ | x | ________ | = | _______ |
| 7. orients new teachers to the educational program offered in Uniondale and the specifically assigned school. | ______ | x | ________ | = | _______ |
| 8. conducts demonstration teaching. | ______ | x | ________ | = | _______ |

(Figure VI continued on page 202)

FIGURE VI - Continued

| | | Weight | | Rating | | Total Points |
|---|---|---|---|---|---|---|
| 9. | coordinates and stilmulates the professional reading habits of the staff at assigned school (to include editorial, research and program description articles and books). | ______ | x | ________ | = | _______ |
| 10. | develops the school budget in concert with the Assistant Superintendent for Instruction. | ______ | x | ________ | = | _______ |
| 11. | orders instructional and non-instructional supplies and materials. | ______ | x | ________ | = | _______ |
| 12. | organizes and plans for registration of new pupils. | ______ | x | ________ | = | _______ |
| 13. | organizes and manages clerical procedures. | ______ | x | ________ | = | _______ |
| 14. | organizes and supervises maintenance of buildings and grounds, fire drills, bus drills and safety inspections. | ______ | x | ________ | = | _______ |
| 15. | organizes and supervises teaching personnel. | ______ | x | ________ | = | _______ |
| 16. | organizes and supervises the school lunch program. | ______ | x | ________ | = | _______ |
| 17. | schedules school activities. | ______ | x | ________ | = | _______ |
| 18. | designs formats for records and reports. | ______ | x | ________ | = | _______ |
| 19. | updates reports and records. | ______ | x | ________ | = | _______ |
| 20. | coordinates and supervises special services provided by the District, such as buidance, health, speech, reading, psychology and attendence. | ______ | x | ________ | = | _______ |
| 21. | coordinates the District testing program at assigned school. | ______ | x | ________ | = | _______ |

FIGURE VI - Continued

| | Weight | | Rating | | Total Points |
|---|---|---|---|---|---|
| 22. handles disciplinary and grievance proceedings. | ______ | x | ______ | = | ______ |
| 23. consults and advises the Assistant Superintendent for Instruction and the Superintendent of Schools in regard to contract negotiations. | ______ | x | ______ | = | ______ |
| 24. maintains clear, specific and concise records of his activities. | ______ | x | ______ | = | ______ |
| 25. orients the respective community to the staff and educational programs (report systems, curriculum and instructional programs, discipline policies, etc.) offered at the assigned school. | ______ | x | ______ | = | ______ |
| 26. maintains a systematic two-way communication system with the community. | ______ | x | ______ | = | ______ |
| 27. plans, organizes and administers educational and interactive programs and workshops for parents. | ______ | x | ______ | = | ______ |

COMMENTS AND RECOMMENDATIONS:

| | Weight | | Rating | | Total Points |
|---|---|---|---|---|---|
| Total | ______ | | | | ______ |
| FINAL RATING= $\frac{\text{Total Points}}{\text{Total Weights}}$ = | ______ | = | ______ | = | ______ |

I have received a copy of this
evaluation and have discussed
it with my immediate supervisor:

______________________________ ______________________________

## FIGURE VII

## ELEMENTARY SCHOOL ADMINISTRATOR'S EVALUATION - M. B. O.

| | RATING | | | | |
|---|---|---|---|---|---|
| MBO #1 | 1 | 2 | 3 | 4 | 5 |
| a) Milestones adequately documented. | | | | | |
| b) Completion of milestones as per timeline. | | | | | |
| MBO #2 | | | | | |
| a) Milestones adequately documented. | | | | | |
| b) Completion of milestones as per timeline. | | | | | |
| MBO #3 | | | | | |
| a) Milestones adequately documented. | | | | | |
| b) Completion of milestones as per timeline. | | | | | |

FINAL RATING = $\frac{\text{Total Points}}{6} = \frac{\underline{\qquad\qquad}}{6} = \underline{\qquad\qquad\qquad}$

---

The administrator's yearly evaluation based on the job description is 3.5. It is multiplied by the six units of 10 in the 60% which is the total value of this portion of the overall evaluation, thus accruing 21.0 points.

Then, following the same procedure, the administrator's score for the management objectives is multiplied by the three units of ten involved in this segment of the valuation for a sum of 9.0 points: MBO's -(3.0 x 3 = 9.0).

Last, the superintendent's evaluation is multiplied by one unit of ten to arrive at the total points for this aspect of the total evaluation: (3.0 x 1 = 3.0).

The total points in the case of the administrator noted above is 33.0. This is then divided by 10 - the number of units of ten in one hundred - to arrive at the final yearly rating of 3.3 (33.0 ÷ 10 = 3.3).

To arrive at the dollar value of this rating it would be necessary to follow the illustration given.

| Persons Eligible For Merit |
|---|
| 3.1 |
| 3.3 |
| 3.6 |
| 3.9 |
| 5.0 |
| 4.0 |
| 4.5 |
| 4.3 |
| 3.7 |
| 3.9 |
| 93 tenths |

Every administrator whose final yearly rating exceeds 3.0 is eligible for a merit payment. In the example just given there was an accumulated total of 93 tenths above 3.0. Since the administrators' bargaining unit had negotiated a sum of $7,000 for merit payments, one divides the $7,000 by 93 to arrive at the share of merit for each tenth above 3.0 ($7,000 ÷ 93 = $75.30).

If a given administrator has a final rating of 4.0, that person would receive ten shares of merit, or $753.00.

As indicated previously, the plan was agreed upon during negotiations between the administrators' bargaining unit and representatives of the Board of Education. The responsibility for success of the plan is shared by both the bargaining unit and the central office administrators. Mutual agreement and shared responsibility for the concept of performance reward and the details of the plan are ingredients for success. Since the employees take many of the "risks", respect and trust of the administration and Board of Education are prerequisites for acceptance of the plan. Both parties believe that this plan will facilitate individual professional development and thus lead to increased satisfaction, status and material reward. More important the District will experience an improved quality of educational leadership.

## Chapter 15

# TRENDS IN NEGOTIATIONS

By Charles N. Rellis

As a new school year begins, the first order of business for many school districts is how to stop the teachers' picket lines outside the Board of Education office and get the teachers back into the classroom. State and federal associations and unions have grown in membership to the point where collective bargaining is commonplace. Unfortunately the teachers' strike has also become commonplace. The National Education Association (NEA) and the American Federation of Teachers (AFT) have and are not engaged in battle as to who will represent teachers at the bargaining table.

At one time, teacher benefits and employment conditions for the next school year were simply a recommendation by the school superintendent to the Board of Education. The Board either accepted, amended or rejected the recommendation. Many districts then went through the decade of the councils. These employee councils were made up on a proportion representation basis of delegates from employee organizations. In the beginning, the superintendent would meet with the council. Policies would be thrashed out that set forth working conditions. Then, a compromised salary schedule would be agreed upon and presented to the school board for approval.

As time went on, the effectiveness of the superintendent's role was lessened as he was seen by the council members as the representative of the Board. Labor and management lines became more clearly defined and deeply drawn.

Next, school boards turned to attorneys to represent them at the bargaining table. This venture met with mixed success as attorneys were sometimes without expertise in this area of public sector negotiations. At least, the move toward attorneys accomplished the urgently needed removal of the superintendent from immediate and direct involvement in the negotiation process.

Then, school boards chose the most likely person on the district administrative staff to handle negotiations. This person was usually the personnel manager, as he had the most experience dealing with working conditions, salaries and fringe benefits and other related items. Assisting the personnel manager were other selected management representatives. Such a team, for the most part, would consist of school principals and central office personnel representing budgeting and instruction.

Now the range of negotiators has come full circle. School systems tend to employ a professional, experienced negotiator as a member of the staff; employ an outside consultant firm specializing in this field; or use experienced school board members as negotiators with the school district's central office administration team serving as resource people.

As school negotiations began, negotiators were meeting and working, in most cases, with a professional organization, usually an NEA affiliate. The American Federation of Teachers (AFL-CIO) referred to the NEA and state affiliates as company unions. With the advent of collective bargaining the AFT showed a stronger interest in representation and membership. In an attempt to meet this challenge, the NEA replaced many of its management and field representatives with new aggressive types and disaffiliated themselves from management groups. This brought about a militancy from the NEA affiliates so that it was difficult to distinguish between what had become, in fact, two competing unions. Organizational disputes and representative elections became commonplace.

With the trend of NEA to send "flying squads" to trouble spots, the international parent organization of the AFT utilized the industrial concept of "abnormal activity--abnormal help". This escalated the employee dispute regardless of representation. Both unions were seeking a cause celebre with which they could identify. By creating and exploiting such situations each could use it as a platform for seeking exclusive representation status.

Lest it be thought that bargaining occurs only with teacher organizations, consider the changes that are taking place in negotiations with non-certificated (classified) personnel. In much the same manner as the teacher groups, there is a new militancy with the representatives of the classified. There are competing rivalries for representation among such diverse groups as the State School Employees Association, the Service Employees (AFSCME), the International Brotherhood of the Teamsters and various craft unions of the AFT-CIO. This has brought about not clear-cut negotiations with a single employee representative, but decisive rivalry among competing groups. When a representative is selected it must prove its right to remain the exclusive agent by being more aggresive and getting more for its membership. When Samuel Gompers was asked what he wanted for his membership, he state "more". This has not changed in 75 years.

## Examples of Employee Demands

Employee groups are negotiating for higher salaries and many fringe benefits. The following are some examples of what was presented during recent negotiations:

> Mutil-Year Contracts (two year period) are negotiated in several ways after the initial agreement.

- Fringe benefits cannot be changed for two years.
- Only salaries will be renegotiated the second year.
- Non-economic/economic teams will be renegotiated the second year.
- No contract changes over the two-year period.

## Salaries

Large salary increases are demanded by teachers' unions. The object is to "come in" as high as possible and "give in" as little as possible. President Carter's voluntary salary increase guidelines, which were to be effective for contracts negotiated between October 25, 1978 and September 30, 1979, called for a seven per cent increase per year, and not more than eight per cent in any year of a multi-year contract. One of the difficulties in determining the percentage of increase was whether to include salary increments earned through longevity in the district. This point was debatable among negotiating groups. In several states the guidelines were ignored entirely by both unions and school boards.

## Fringe Benefits

- Payment of hospitalization insurance premiums for employees - School district to pay 100% of employee premiums.
- Payment of hospitalization insurance premiums for dependents - Bargaining units are continually pushing for 100% payment of insurance premiums for dependents/family of the employee. The coverage usually requested is the Basic Medical Insurance Plan and Major Medical.
- Expanded insurance coverage - This could include life insurance, accidental death and dismemberment, income protection and dental insurance. The employer would pay for all coverages for the employee and eventually the employee's dependents.
- Other fringe benefits related to insurance packages - Single employees may elect to have fringe benefits equal to the monetary difference between the dependent/family plan and the single plan. These may be tax sheltered annuities, additional life insurance or income protection insurance. Bargaining units will ask for the above when insurance premiums are paid by the school district for family and dependents.
- Teacher retirement contributions paid by the Board of Education - In Illinois all certified employees contribute to the Illinois Teacher Retirement System. The amount contributed is eight percent of the contract salary. This will benefit the employee in several ways:

1) The portion paid by the Board of Education is a federal tax deduction up to seven percent of the employee's salary. One percent is not deductible because it is an insurance payment. The employee will pay fewer taxes for the current taxable year.

2) The employee will receive credit toward his retirement fund for his entire salary. This is important because retirement benefits are based on the highest for-year average of the last 10 years in the Illinois Retirement System.

* Sick Leave Banks - Employees will pool a specified number of days from their unused sick leave days to be used by member of their group that have exhausted their sick leave. This will prevent salary deductions for the individuals involved.

* Accumulation of sick leave days - When employees do not use all of their sick leave days they can accumulate. The union's goal is for an employee to accumulate enough days for one academic school year.

* Additional sick leave days per year - These constitute additional days to be added per school year contract. States usually set a minimum number, but unions will negotiate to exceed that number.

* Sabbatical leaves with pay - Allows teachers a percentage or all of their pay including the full teacher-benefit package.

* Pregnancy leaves with pay - Mandated judicially, pregnancy is to be treated as an illness and full sick pay is due. Part of the negotiated agreement should include correct procedures to be used when applying for job protection and returning to work.

* Reimbursement for gasoline and use of car for traveling within the district - Reimbursement demands will vary but negotiators should understand that the federal government will allow a standard deduction per mile. Reimbursement over that figure per mile will be regarded as taxable income.

* Business days - Two per year may or may not be accumulated. Business days are allowed to employees for court appearances, real estate closing, religious holidays and so forth.

School Management -- Unions are demanding to be heard in such areas as:

* School calander - starting and closing dates, vacations teachers' record day and others.

* Length of work day and school day - starting and finishing times, minimum time to report to work and leave after work.

- Class size - no class shall exceed a specified number of pupils.

- Evaluation of supervisory personnel by teaching staff-the favorite target for the teachers is the school principal. Since principals evaluate teachers, it is felt teachers should evaluate them.

- Textbook selections - formulating curriculum committees for the selection of textbooks.

- School supplies - have a voice in the selection of school supplies such as construction paper, art supplies and writing paper.

- Abrood vs. Detroit Board of Education, "Agency Shop" - The United States Supreme Court determined that a teacher's union under an "agency shop" contract may charge non-union members fees equivalent to union dues provided the fees are used for negotiations, contract administration, and grievance procedures. The union, however, cannot use such fees collected for financing political campaigns or promoting political views or ideas. An "agency shop" is when employees must pay the same dues but membership in the bargaining unit is not required. The impetus of the law suit is that a majority of employees in a bargaining unit select an organization to represent the unit in dealing collectively with its employers; all employees should bear the cost of representation whether they belong to the organization or not.

- Expanding contract to include other employees - Library aides, teacher aides, counselors, deans, attendance officers--the more groups involved the more powerful the union.

- Collection of union dues as a payroll deduction - Employing district prepares payroll deductions and issues a check periodically to union treasurer.

- Election of union members on school boards - High powered unions may back aspiring candidates to run against private citizens competing for school board seats. The priority to consider is what the union-backed candidate will consider most important, student and community welfare or employee welfare.

- Job security based on seniority - When there is a reduction in staff, seniority and not ability is to be used.

- Released time for self-contained classroom teacher-Teachers may demand planning periods every day as theri junior high and high school counterparts receive.

- State of economy - California's Proposition 13, restrictions on spending, and forced staff reduction due to uncollected taxes, defeated referendums, and inflationary increases in pupil per capita spending must be considered when determining negotiated economic issues.

- School state law vs. school board policy vs. negotiated contract - All three should be in accord with the school state laws as the primary reference point.

- Affirmative actions - Affirmative actions by federal government can upset all previous negotiations when it comes to teacher assignments, hiring quotas, desegragation, and withholding of federal and state funds.

Currently, there is a greater amelioration taking place between management and labor because the general public is restless about the public schools. This restlessness is brought about by the public paying higher taxes to support a school system that is not performing up to desired public standards. This places the public and the employees on a collision course. The problem cannot be solved by the school boards as they are faced with declining enrollment and shrinking funds.

Relief can only come from state legislatures. Tax override elections do not appear to be an effective solution. The overwhelming defeat of such attempts in recent times amounts to a taxpayers' revolt. Caught in the crossfire are school board members and school administrators. The belief that experience with collective bargaining will lead to a calmer resolution of problems has not been realized by those who have dealt with this new system. While it may appear to be pessimistic, reality indicates a rough road ahead until logic and reasonableness return to employee relations in the public schools. Both management and the labor unions have responsibilities to ease the tension and imprvoe the situation.

# APPENDICES

# APPENDIX I:

# ILLUSTRATIVE STATE LABOR RELATIONS ACT

## State of Maine

MAINE LABOR RELATIONS BOARD

Chapter 9-A, Title 26

REVISION OF 1976

(Effective date July 6, 1978)

# MUNICIPAL PUBLIC EMPLOYEES LABOR RELATIONS ACT

Prepared and distributed by

MAINE LABOR RELATIONS BOARD
Augusta, Maine 04333

MLRB No. 101 REV. 1978

## CHAPTER 9-A

## MUNICIPAL PUBLIC EMPLOYEES LABOR RELATIONS LAW

### Chapter 424, P.L. 1969[*]

Sec.
961. Purpose.
962. Definitions.
963. Right of public employees to join labor organizations.
964. Prohibited acts of public employers, public employees and public employee organizations.
965. Obligation to bargain; mediation; fact-finding; arbitration.
966. Bargaining unit; how determined.
967. Determination of bargaining agent.
968. Right of appeal.
969. Municipal personnel board or civil service authority.
970. Scope of binding contract arbitration.
971. Rules and regulations.
972. Review.
973. Separability.

### Sec. 961. Purpose

It is declared to be the public policy of this State and it is the purpose of this chapter to promote the improvement of the relationship between public employers and their employees by providing a uniform basis for recognizing the right of public employees to join labor organizations of their own choosing and to be represented by such organizations in collective bargaining for terms and conditions of employment.

### Sec. 962. Definitions

As used in this chapter the following terms shall, unless the context requires a different interpretation, have the following meanings:

1. **Board.** "Board" means the Maine Labor Relations Board referred to in section 968.

2. **Bargaining agent.** "Bargaining agent" means any lawful organization, association or individual representative of such organi-

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[*] As amended by Chapter 578 P.L. 1970; as amended by Chapter 609 P.L. 1972, as amended by Chapters 458, 533, 610, and 617, P.L. 1973, as amended by Chapter 788, P.L. 1974; as amended by Chapters 9, 361, 564, and 623, P.L. 1975, as amended by Chapters 697, 717, 770, 771, and 776, P.L. 1976; as amended by Chapters 479, and 553, P.L. 1977; and as amended by Chapters 674, and 696, P.L. 1978.

zation or association which has as its primary purpose the representation of employees in their employment relations with employers, and which has been determined by the public employer or by the executive director of the board to be the choice of the majority of the unit as their representative.

3. **Director.** "Director" means Director of the Bureau of Labor.

4-B. **Executive director.** "Executive director" means the Executive Director of the Maine Labor Relations Board.

5. **Professional employee.** "Professional employee" means any employee engaged in work:

A. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;

B. Involving the consistent exercise of discretion and judgment in its performance;

C. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given time period; and

D. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes.

6. **Public employee.** "Public employee" means any employee of a public employer except any person:

A. Elected by popular vote; or

B. Appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer; or

C. Whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to the executive head, body, department head or division head; or

D. Who is a department head or division head appointed to office pursuant to statute, ordinance or resolution for an unspecified term by the executive head or body of the public employer; or

E. Who is a superintendent or assistant superintendent of a school system; or

F. Who has been employed less than 6 months; or

G. Who is a temporary, seasonal or on-call employee.

7. **Public employer.** "Public employer" means any officer, board, commission, council, committee or other persons or body acting on behalf of any municipality or town or any subdivision thereof, or of any school, water, sewer or other district, or of the Maine Turnpike Authority.

### Sec. 963. Right of public employees to join labor organizations

No one shall directly or indirectly interfere with, intimidate, restrain, coerce or discriminate against public employees or a group of public employees in the free exercise of their rights, hereby given, voluntarily to join, form and participate in the activities of organizations of their own choosing for the purposes of representation and collective bargaining, or in the free exercise of any other right under this chapter.

### Sec. 964. Prohibited acts of public employers, public employees and public employee organizations.

1. Public employer prohibitions. Public employers, their representatives and their agents are prohibited from:

A. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 963;

B. Encouraging or discouraging membership in any employee organization by discrimination in regard to hire or tenure of employment or any term or condition of employment;

C. Dominating or interfering with the formation, existence or administration of any employee organization;

D. Discharging or otherwise discriminating against an employee because he has signed or filed any affidavit, petition or complaint or given any information or testimony under this chapter;

E. Refusing to bargain collectively with the bargaining agent of its employees as required by section 965;

F. Blacklisting of any employee organization or its members for the purpose of denying them employment.

2. **Public employee prohibitions.** Public employee, public em-

ployee organizations, their agents, members and bargaining agents are prohibited from:

**A.** Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 963, or a public employer in the selection of his representative for purposes of collective bargaining or the adjustment of grievances;

**B.** Refusing to bargain collectively with a public employer as required by section 965;

**C.** Engaging in
(1) A work stoppage;
(2) A slowdown;
(3) A strike; or
(4) The blacklisting of any public employer for the purpose of preventing it from filling employee vacancies.

**3. Violations.** Violations of this section shall be processed by the board in the manner provided in section 968, subsection 5.

### Sec. 965. Obligation to bargain

**1. Negotiations.** It shall be the obligation of the public employer and the bargaining agent to bargain collectively. "Collective bargaining" means, for the purposes of this chapter, their mutual obligation

**A.** To meet at reasonable times;

**B.** To meet within 10 days after receipt of written notice from the other party requesting a meeting for collective bargaining purposes, provided the parties have not otherwise agreed in a prior written contract;

**C.** To confer and negotiate in good faith with respect to wages, hours, working conditions and contract grievance arbitration except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession and except that public employers of teachers shall meet and consult but not negotiate with respect to educational policies for the purpose of this paragraph, educational policies shall not include wages, hours, working conditions or contract grievance arbitration;

**D.** To execute in writing any agreements arrived at, the term of any such agreement to be subject to negotiation but shall not exceed 3 years; and

E. To participate in good faith in the mediation, fact-finding and arbitration procedures required by this section.

Whenever wages, rates of pay or any other matter requiring appropriation of money by any municipality are included as a matter of collective bargaining conducted pursuant to this chapter, it is the obligation of the bargaining agent to serve written notice of request for collective bargaining on the public employer at least 120 days before the conclusion of the current fiscal operating budget.

### 2. Mediation

**A.** It is the declared policy of the State to provide full and adequate facilities for the settlement of disputes between employers and employees or their representatives and other disputes subject to settlement through mediation.

**B.** Mediation procedures shall be followed whenever either party to a controversy requests such services prior to arbitration, or, in the case of disputes affecting public employers, public employees or their respective representatives as defined, whenever requested by either party prior to arbitration or at any time on motion of the Maine Labor Relations Board or its executive director.

**C.** A panel of mediators, to consist of not less than 5 nor more than 10 impartial members, shall be appointed by the Governor, from time to time upon the expiration of the terms of the several members, for terms of 3 years. They shall be chosen by the Governor from a list, containing at least 5 times as many names as the number of persons to be chosen, supplied at least once a year by the Maine Labor Relations Board. Vacancies occurring during a term shall be filled for the unexpired term. Members of the panel shall each receive $75 a day for their services for the time actually employed in the discharge of their official duties and shall also receive their traveling and all other necessary expenses. The cost for services rendered and expenses incurred by members of the panel of mediators shall be paid by the State for those mediation cases not exceeding 3 days in length from an appropriation for said panel which shall be included in the budget of the Maine Labor Relations Board. Any costs for services rendered and expenses incurred by the panel of mediators beyond the 3rd mediation day per case shall be shared equally by the parties to the proceedings, except that on a showing by either party that such payment would impose undue financial hardship, the executive director may waive all or part of such obligation.

Such amount waived shall be paid from the above-mentioned appropriation. Authorization for services rendered and expenditures incurred by members of the panel shall be the responsibility of the Executive Director of the Maine Labor Relations Board.

D. The employer, union or employees involved in collective bargaining shall notify the Executive Director of the Maine Labor Relations Board, in writing, at least 30 days prior to the expiration of a contract, or 30 days prior to entering into negotiations for a first contract between the employer and the employees, or whenever a dispute arises between the parties threatening interruption of work, or under both conditions.

E. The Executive Director of the Maine Labor Relations Board shall serve as Executive Director of the Panel of Mediators. He shall annually, on or before the first day of July make a report to the Governor. The Executive Director of the Maine Labor Relations Board, upon request of one or both of the parties to a dispute between an employer and its employees, shall, or upon his own motion or motion of the Maine Labor Relations Board may, proffer the services of one or more members of the panel to be selected by him, to serve as mediator or mediators in such a dispute. The member or members so selected shall exert every reasonable effort to encourage the parties to the dispute to settle their differences by conference or other peaceful means. If the mediator or mediators are unable to accomplish this objective and to obtain an amicable settlement of the dispute between the parties, it shall then be the duty of the mediator or mediators to advise the parties of the services available to assist them in settlement of their dispute. At this time, the mediator or mediators shall submit a written report to the Executive Director stating the action or actions that have been taken and the results of their endeavors.

F. The services of the Panel of Mediators shall not be invoked in any dispute regarding a matter of grievance between the parties to an agreement, if such agreement provides for an alternate method of settlement of such grievance dispute; however, the services of the Panel of Mediators shall always be available as a technique for impasse resolution in contract negotiations and may be invoked as described in paragraph B.

G. Any information disclosed by either party to a dispute to the panel or any of its members in the performance of this subsection shall be privileged.

**3. Fact-finding**

**A.** If the parties, either with or without the services of a mediator, are unable to effect a settlement of their controversy, they may jointly agree either to call upon the Maine Labor Relations Board to arrange for fact-finding services and recommendations to be provided by the Maine Board of Arbitration and Conciliation, or to pursue some other mutually acceptable fact-finding procedure, including use of the Federal Mediation and Conciliation Service or the American Arbitration Association according to their respective procedures, rules and regulations.

**B.** If the parties do not jointly agree to call upon the Maine Labor Relations Board or to pursue some other procedure, either party to the controversy may request the executive director to assign a fact-finding panel. If so requested, the executive director shall appoint a fact-finding panel, ordinarily of 3 members, in accordance with rules and procedures prescribed by the board for making such appointment. The fact-finding panel shall be appointed from a list maintained by the board and drawn up after consultation with representatives of state and local government administrators, agencies with industrial relations and personnel functions and representatives of employee organizations and of employers. Any person who has actively participated as the mediator in the immediate proceedings for which fact-finding has been called shall not sit on that fact-finding panel. The panel shall hear the contending parties to the controversy. It may request statistical data and reports on its own initiative in addition to the data regularly maintained by the Bureau of Labor, and shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative or pertinent to the issues represented to them. The members of the fact-finding panel shall submit their findings and recommendations only to the parties and to the Executive Director of the Maine Labor Relations Board.

**C.** The parties shall have a period of 30 days, after the submission of findings and recommendations from the fact finders, in which to make a good faith effort to resolve their controversy. If the parties have not resolved their controversy by the end of said period, either party or the Executive Director of the Maine Labor Relations Board may, but not until the end of said period unless the parties otherwise jointly agree, make the fact-finding and recommendations public.

D. If the parties do not agree to follow the fact-finding procedures outlined in paragraph A, they may jointly apply to the executive director or his designee to waive fact-finding. The executive director or his designee may accept or refuse to accept the parties' agreement to waive fact-finding and his decision shall not be reviewable.

4. **Arbitration.** In addition to the 30-day period referred to in subsection 3, the parties shall have 15 more days, making a total period of 45 days from the submission of findings and recommendations, in which to make a good faith effort to resolve their controversy.

If the parties have not resolved their controversy by the end of said 45-day period, they may jointly agree to an arbitration procedure which will result in a binding determination of their controversy. Such determinations will be subject to review by the Superior Court in the manner specified by section 972.

If they do not jointly agree to such an arbitration procedure within 10 days after the end of said 45-day period, then either party may, by written notice to the other, request that their differences be submitted to a board of 3 arbitrators. The bargaining agent and the public employer shall within 5 days of such request each select and name one arbitrator and shall immediately thereafter notify each other in writing of the name and address of the person so selected. The 2 arbitrators so selected and named shall, within 10 days from such request, agree upon and select and name a neutral arbitrator. If either party shall not select its arbitrator or if the 2 arbitrators shall fail to agree upon, select and name a neutral arbitrator within said 10 days, either party may request the American Arbitration Association to utilize its procedures for the selection of the neutral arbitrator. As soon as possible after receipt of such request, the neutral arbitrator will be selected in accordance with rules and procedures prescribed by the American Arbitration Association for making such selection. The neutral arbitrator so selected will not, without the consent of both parties, be the same person who was selected as mediator pursuant to subsection 2 nor any member of the fact-finding board selected pursuant to subsection 3. As soon as possible after the selection of the neutral arbitrator, the 3 arbitrators or if either party shall not have selected its arbitrator, the 2 arbitrators, as the case may be, shall meet with the parties or their representatives, or both, forthwith, either jointly or separately, make inquiries and investigations, hold hearings, or take such other steps as they deem appropriate. If the neutral arbitrator is selected by utilizing the procedures of the American Arbitration Association, the arbitration proceedings will be conducted in accordance with the rules and procedures of the American Arbitration Association. The hearing shall be informal, and the rules of evidence prevailing in judicial proceedings shall not be binding. Any and all documentary evidence and other data deemed relevant by the arbitrators may be received in evidence. The arbitrators shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative or pertinent to the issues represented to them for determination.

If the controversy is not resolved by the parties themselves, the arbitrators shall proceed as follows: With respect to a controversy over salaries, pensions, and insurance, the arbitrators will recommend terms of settlement and may make findings of fact; such recommendations and findings will be advisory only and will be made, if reasonably possible, within 30 days after the selection of the neutral arbitrator; the arbitrators may in their discretion, make such recommendations and findings public, and either party may make such recommendations and findings public if agreement is not reached with respect to such findings and recommendations within 10 days after their receipt from the arbitrators; with respect to a controversy over subjects other than salaries, pensions and insurance, the arbitrators shall make determinations with respect thereto if reasonably possible within 30 days after the selection of the neutral arbitrator; such determinations may be made public by the arbitrators or either party; and if made by a majority of the arbitrators, such determinations will be binding on both parties and the parties will enter an agreement or take whatever other action that may be appropriate to carry out and effectuate such binding determinations; and such determinations will be subject to review by the Superior Court in the manner specified by section 972. The results of all arbitration proceedings, recommendations and awards conducted under this section shall be filed with the Maine Labor Relations Board at the offices of its executive director simultaneously with the submission of the recommendations and award to the parties. In the event the parties settle their dispute during the arbitration proceeding, the arbitrator or the chairman of the arbitration panel will submit a report of his activities to the Executive Director of the Maine Labor Relations Board not more than 5 days after the arbitration proceeding has terminated.

5. **Costs.** The costs for the services of the mediator, the mem-

bers of the fact-finding board and of the neutral arbitrator including, if any, per diem expenses, and actual and necessary travel and subsistence expenses and the costs of hiring the premises where any mediation, fact-finding or arbitration proceedings are conducted, will be shared equally by the parties to the proceedings. All other costs will be assumed by the party incurring them. The services of the members of the State of Maine's Panel of Mediators, to a maximum of 3 mediation days per case and of the Maine Board of Arbitration and Conciliation are available to the parties without cost.

6. **Arbitration administration.** The cost for services rendered and expenses incurred by the Maine Board of Arbitration and Conciliation, as defined in section 911, shall be paid by the State from an appropriation for said Board of Arbitration and Conciliation which shall be included in the budget of the Maine Labor Relations Board. Authorization for services rendered and expenditures incurred by members of the State Board of Arbitration and Conciliation shall be the responsibility of the executive director.

### Sec. 966. Bargaining unit; how determined

1. **Bargaining unit standards.** In the event of a dispute between the public employer and an employee or employees as to the appropriateness of a unit for purposes of collective bargaining or between the public employer and an employee or employees as to whether a supervisory or other position is included in the bargaining unit, the executive director or his designee shall make the determination, except that anyone excepted from the definition of public employee under section 962 may not be included in a bargaining unit. The executive director or his designee conducting unit determination proceedings shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative or pertinent to the issues represented to them. In determining whether a supervisory position should be excluded from the proposed bargaining unit, the executive director or his designee shall consider, among other criteria, if the principal functions of the position are characterized by performing such management control duties as scheduling, assigning, overseeing and reviewing the work of subordinate employees, or performing such duties as are distinct and dissimilar from those performed by the employees supervised, or exercising judgment in adjusting grievances, applying other established personnel policies and procedures and in enforcing a collective bargaining agreement or establishing or participating in the establishment of performance standards for subordinate em-

ployees and taking corrective measures to implement those standards. Nothing in this chapter is intended to require the exclusion of principals, assistant principals, other supervisory employees from school system bargaining units which include teachers and nurses in supervisory positions.

2. **Bargaining unit compatibility.** The executive director of the board or his designee shall decide in each case whether, in order to insure to employees the fullest freedom in exercising the rights guaranteed by this chapter and in order to insure a clear and identifiable community of interest among employees concerned, the unit appropriate for purposes of collective bargaining shall be the public employer unit or any subdivision thereof. No unit shall include both professional and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit, except that teachers may be included in a unit consisting of other certificated employees.

3. **Unit clarification.** Where there is a certified or currently recognized bargaining representative and where the circumstances surrounding the formation of an existing bargaining unit are alleged to have changed sufficiently to warrant modification in the composition of that bargaining unit, any public employer or any recognized or certified bargaining agent may file a petition for a unit clarification provided that the parties are unable to agree on appropriate modifications and there is no question concerning representation.

### Sec. 967. Determination of bargaining agent

1. **Voluntary recognition.** Any public employee organization may file a request with a public employer alleging that a majority of the public employees in an appropriate bargaining unit wish to be represented for the purpose of collective bargaining between the public employer and the employees' organization. Such request shall describe the grouping of jobs or positions which constitute the unit claimed to be appropriate and shall include a demonstration of majority support. Such request for recognition shall be granted by the public employer unless the public employer desires that an election determine whether the organization represents a majority of the members in the bargaining unit.

2. **Elections.** The executive director of the board, or his designee, upon signed request of a public employer alleging that one or more public employees or public employee organizations have presented to it a claim to be recognized as the representative of a bargaining unit of public employees, or upon signed petition of at

least 30% of a bargaining unit of public employees that they desire to be represented by an organization, shall conduct a secret ballot election to determine whether the organization represents a majority of the members in the bargaining unit.

The ballot shall contain the name of such organization and that of any other organization showing written proof of at least 10% representation of the public employees within the unit, together with a choice for any public employee to designate that he does not desire to be represented by any bargaining agent. Where more than one organization is on the ballot and no one of the 3 or more choices receives a majority vote of the public employees voting, a run-off election shall be held. The run-off ballot shall contain the 2 choices which received the largest and second-largest number of votes. When an organization receives the majority of votes of those voting, the executive director of the board shall certify it as the bargaining agent. The bargaining agent certified as representing a bargaining unit shall be recognized by the public employer as the sole and exclusive bargaining agent for all of the employees in the bargaining unit, unless and until a decertification election by secret ballot shall be held and the bargaining agent declared by the executive director of the board as not representing a majority of the unit.

Whenever 30% of the employees in a certified bargaining unit petition for a bargaining agent to be decertified, the procedures for conducting an election on the question shall be the same as for representation as bargaining agent hereinbefore set forth.

No question concerning representation may be raised within one year of a certification or attempted certification. Where there is a valid collective bargaining agreement in effect, no question concerning unit or representation may be raised except during the period not more than 90 nor less than 60 days prior to the expiration date of the agreement.

The bargaining agent certified by the executive director of the board as the exclusive bargaining agent shall be required to represent all the public employees within the unit without regard to membership in the organization certified as bargaining agent, provided that any public employee at any time may present his grievance to the public employer and have such grievance adjusted without the intervention of the bargaining agent, if the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect and if the bargaining agent's representative has been given reasonable opportunity to be present at any meeting of the parties called for the resolution of such grievance.

### Sec. 968. Maine Labor Relations Board; powers and duties

**1. Maine Labor Relations Board.** The Maine Labor Relations Board shall consist of 3 members and 6 alternates to be appointed by the Governor, subject to review by the Joint Standing Committee on Labor and to confirmation by the Legislature. The Governor, in making his appointments, shall name one member and 2 alternates to represent employees, one member and 2 alternates to represent employers and one member and 2 alternates to represent the public. The member representing the public shall be the board's chairman and the alternate representing the public shall be an alternate chairman. Members of the board shall each receive $75 a day, except for the chairman who shall receive $100 per day, for their services for the time actually employed in the discharge of their official duties. The alternates shall be paid at the same per diem rate as the member that the alternate replaces. The term of each member and each alternate shall be for a period of 4 years; provided that of the members and alternates first appointed, one member and 2 alternates shall be appointed for a period of 4 years, one member and 2 alternates shall be appointed for a period of 3 years and one member and 2 alternates shall be appointed for a period of 2 years. The members of the board, its alternates and its employees shall receive necessary expenses. The executive director and legal or professional personnel employed by the board shall be members of the unclassified service.

**2. Executive director.** An Executive Director of the Maine Labor Relations Board shall be appointed by the board to serve at their will and pleasure. The person so appointed shall be experienced in the field of labor relations. He shall perform the duties designated by statute and such other duties as shall from time to time be assigned to him by the board. He shall serve as secretary of the board and shall maintain a record of all proceedings before the board. No board member shall serve as executive director. The salary of the executive director shall be established by the board within the limits of the salary range to which the unclassified executive director's position is assigned.

**3. Rule-making power.** The board may, after a public hearing, from time to time, adopt such rules of procedure as it deems necessary for the orderly conduct of its business and for carrying out the purposes of this chapter. Such rules shall be published and made available to all interested parties. The board shall also, upon its own initiative or upon request, issue interpretative rules interpreting this chapter. Such interpretative rules shall be advisory only and shall not be binding upon any court. Such interpretative rules must be in writing and available to any person interested therein.

**4. Review of representative proceedings.** Any party aggrieved by any ruling or determination of the executive director, or his designee, under sections 966 and 967 may appeal, within 15 days of the announcement of the ruling or determination, except that in the instance of objections to the conduct of an election or challenged ballots the time period shall be 5 working days, to the Maine Labor Relations Board.

Upon receipt of such an appeal, the board shall within a reasonable time hold a hearing having first caused 7 days notice in writing of the time and place of such hearing to be given to the aggrieved party, the labor organizations or bargaining agent and the public employer. Such hearings shall be conducted in the manner provided in subsection 5, paragraph B. Within a reasonable time after the conclusion of any hearing the board shall make a written decision which shall include findings of fact and shall either affirm or modify the ruling or determination of the executive director and specify the reasons for such action. A copy of such decision shall be mailed to the labor organization or bargaining agent or its attorney or other designated representative and the public employer. Decisions of the board made pursuant to this subsection shall be subject to review by the Superior Court in the manner specified in section 972.

**5. Prevention of prohibited acts.**

A. The board is empowered, as provided, to prevent any person, any public employer, any public employee, any public employee organization, or any bargaining agent from engaging in any of the prohibited acts enumerated in section 964. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise.

B. Any public employer, any public employee, any public employee organization or any bargaining agent which believes that any person, any public employer, any public employee, any public employee organization or any bargaining agent has engaged in or is engaging in any such prohibited practice may file a complaint with the executive director of the board stating the charges in that regard. No such complaint shall be filed with the executive director until the complaining party shall have served a copy thereof upon the party complained of. Upon receipt of such complaint, the executive director or his designee shall review the charge to determine whether the facts as alleged may constitute a prohibited act. If it is determined that the facts do not, as a matter of law, constitute a

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violation, the charge shall be dismissed by the executive director, subject to review by the board. If a formal hearing is deemed necessary by the executive director or by the board, the executive director shall serve upon the parties to the complaint a notice of the prehearing conference and of the hearing before the board, that notice to designate the time and place of hearing for the prehearing conference or the hearing, as appropriate, provided that no hearing shall be held based upon any alleged prohibited practice occurring more than 6 months prior to the filing of the complaint with the executive director. The party complained of shall have the right to file a written answer to the complaint and to appear in person or otherwise and give testimony at the place and time fixed for the hearing. In the discretion of the board, any other person or organization may be allowed to intervene in the proceeding and to present testimony. Nothing in this paragraph shall restrict the right of the board to require the executive director or his designee to hold a prehearing conference on any prohibited practice complaint prior to the hearing before the board and taking whatever action, including dismissal, attempting to resolve disagreements between the parties or recommending an order to the board, as he may deem appropriate, subject to review by the board.

C. After hearing and argument if, upon a preponderance of the evidence received, the board shall be of the opinion that any party named in the complaint has engaged in or is engaging in any such prohibited practice, then the board shall in writing state its findings of fact and the reasons for its conclusions and shall issue and cause to be served upon such party an order requiring such party to cease and desist from such prohibited practice and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this chapter. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause.

After hearing and argument if, upon a preponderance of the evidence received, the board shall not be of the opinion that the party named in the complaint has engaged in or is engaging in any such prohibited practice, then the board shall in writing state its findings of fact and the reasons for its conclusions and shall issue an order dismissing said complaint.

D. If after the issuance of an order by the board requiring any party to cease and desist or to take any other affirmative action, said party fails to comply with the order of the board then the party in whose favor the order operates or the board may file a civil action in the Superior Court of Kennebec County, or the county in which the prohibited practice has occurred, to compel compliance with the order of the board. Upon application of any party in interest or the board, the court may grant such temporary relief or restraining order and may impose such terms and conditions as it deems just and proper; provided that the board's decision shall not be stayed except where it is clearly shown to the satisfaction of the court that substantial and irreparable injury shall be sustained or that there is a substantial risk of danger to the public health or safety. In such action to compel compliance the Superior Court shall not review the action of the board other than to determine whether the board has acted in excess of its jurisdiction. If an action to review the decision of the board is pending at the time of the commencement of an action for enforcement pursuant to this subsection or is thereafter filed, the 2 actions shall be consolidated.

E. Whenever a complaint is filed with the executive director of the board, alleging that a public employer has violated section 964, subsection 1, paragraph F or alleging that a public employee or public employee organization or bargaining agent has violated section 964, subsection 2, paragraph C, the party making the complaint may simultaneously seek injunctive relief from the Superior Court in the county in which the prohibited practice is alleged to have occurred pending the final adjudication of the board with respect to such matter.

F. Either party may seek a review by the Superior Court of Kennebec County or of the county in which the prohibited practice is alleged to have occurred of a decision of the Maine Labor Relations Board by filing a complaint in accordance with Rule 80B of the Rules of Civil Procedure, provided the complaint shall be filed within 15 days of the effective date of the decision. Upon the filing of the complaint, the court shall set the complaint down for hearing at the earliest possible time and shall cause all interested parties and the board to be notified. Pending review and upon application of any party in interest, the court may grant such temporary relief or restraining order and may impose such terms and conditions as it deems just and proper; provided that the board's decision shall not be stayed except where it is clearly shown to the satisfaction of the court that substantial and irreparable injury shall be sustained or that there is a substantial risk of danger to the public health or safety. The executive director shall forthwith file in the court the record in the proceeding certified by the executive director or a member of the board. The record shall include all documents filed in the proceeding and the transcript, if any. After hearing, which shall be held not less than 7 days after notice thereof, the court may enforce, modify, enforce as so modified or set aside in whole or in part the decision of the board, except that the findings of the board on questions of fact shall be final unless shown to be clearly erroneous. Any appeal to the law court shall be the same as an appeal from an interlocutory order under section 6.

C. In any judicial proceeding authorized by this subsection in which injunctive relief is sought, sections 5 and 6 shall apply, except that neither an allegation nor proof of unavoidable substantial and irreparable injury to the complainant's property shall be required to obtain a temporary restraining order or injunction.

**6. Hearings.** The hearings conducted by the board pursuant to this section shall be informal and the rules of evidence prevailing in judicial proceedings shall not be binding. Any and all documentary evidence and other evidence deemed relevant by the board may be received.

The chairman shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the presentation of books, records and other evidence relative or pertinent to the issues presented to the board for determination. Witnesses subpoenaed by the board shall be allowed the same fees as are paid to witnesses in the Superior Court. These fees, together with all necessary expenses of the board, shall be paid by the Treasurer of State on warrants drawn by the State Controller.

**7. Reports.** The board shall annually, on or before the first day of July, make a report to the Governor. The appropriation for the board and the executive director shall be included in the bureau's budget and authorization for expenditures shall be the responsibility of the director.

The board shall have the authority to recommend to the Legislature changes or additions to this chapter or to related enactments of law.

### Sec. 969. Municipal personnel board or civil service authority

Nothing in this chapter shall diminish the authority and power of any municipal civil service commission or personnel board or its agents established by statute, charter or special act to conduct and grade merit examinations and to rate candidates in the order of their relative excellence from which appointments or promotions may be made to positions in the competitive division of the classified service of the municipal employer served by such a civil service commission or personnel board. The conduct and the grading of merit examinations, the rating of candidates and the establishment of lists from such examinations and the appointments from such lists shall not be subject to collective bargaining. If a collective bargaining agreement between a public employer and a bargaining agent contains provisions for binding arbitration of grievances involving the following matters: The demotion, lay-off, reinstatement, suspension, removal, discharge or discipline of any public employee, such provisions shall be controlling in the event they are in conflict with any authority and power, involving such matters, of any such municipal civil service commission or personnel board or its agents.

### Sec. 970. Scope of binding contract arbitration

A collective bargaining agreement between a public employer and a bargaining agent may provide for binding arbitration as the final step of a grievance procedure but the only grievances which may be taken to such binding arbitration shall be disputes between the parties as to the meaning or application of the specific terms of the collective bargaining agreement. An arbitrator with the power to make binding decisions pursuant to any such provision shall have no authority to add to, subtract from or modify the collective bargaining agreement.

### Sec. 971. Suits by and against unincorporated employee organizations

In any judicial proceeding brought under this chapter or to enforce any of the rights guaranteed by this chapter, any unincorporated employee organization may sue or be sued in the name by which it is known.

### Sec. 972. Review

Either party may seek a review by the Superior Court of a binding determination by an arbitration panel. Such review shall be sought in accordance with Rule 80B of the Rules of Civil Procedure. The binding determination of an arbitration panel or arbitrator in the absence of fraud, upon all questions of fact shall be final.

The court may, after consideration, affirm, reverse or modify any such binding determination or decision based upon an erroneous ruling or finding of law. An appeal may be taken to the law court as in any civil action.

### Sec. 973. Separability

If any clause, sentence, paragraph or part of this chapter for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this chapter.

# APPENDIX II:

# ILLUSTRATIVE STATE LABOR RELATIONS BOARD RULES AND REGULATIONS

# STATE OF MAINE

# MAINE LABOR RELATIONS BOARD

# RULES AND PROCEDURES

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| Chapter 1. | Rule 1.01 et seq. | Unit Determination Rules |
| Chapter 2. | Rule 2.01 et seq. | Decertification Petition Rules |
| Chapter 3. | Rule 3.01 et seq. | Election Rules |
| Chapter 4. | Rule 4.01 et seq. | Prohibited Practice Complaint Rules |
| Chapter 5. | Rule 5.01 et seq. | Fact Finding Rules |

Augusta, Maine
June, 1978

## CHAPTER 1. UNIT DETERMINATION RULES

*Summary:* This chapter contains rules concerning the petitioning, intervention, showing of interest, hearing and appeal process in unit determination and unit clarification matters. The chapter also contains references to the limitation on certification attemps and the "Contract Bar" rule.

1.01 *Parties in Agreement.* When the parties agree that certain categories of jobs constitute an appropriate unit, MLRB Form 1 should be signed by both parties and filed with the Executive Director. The unit agreed to in the MLRB Form 1 shall not be subject to challenge for a period of one (1) year from the date of filing with the Executive Director; however, the MLRB Form 1 may be subject to modification or withdrawal by mutual agreement of the parties thereto at any time.

1.02 *Parties in Disagreement.* When the parties do not agree upon the unit, either party may file a petition for the determination of an appropriate unit.

1.03 *Petition of Employee or Employee Organization.* (A) Verification of Petition - A petition for unit determination shall be in writing, signed and duly acknowledged by a notary public or justice of the peace and shall contain a declaration by the person signing it under penalty of perjury that its contents are true and correct to the best of his knowledge and belief.

(B) Content of Petition - The original and four (4) copies shall be filed with the Board, and shall contain -

(1) The name, address and telephone number of the petitioner and of one designated representative authorized to receive notices or requests for information.

(2) The name and address of the municipal or state employer in which or by whom the affected employees are employed and the name, address and telephone number of the management representative thereof.

(3) A description of the employee representation unit claimed to be appropriate, the estimated number of employees in said unit, the classifications of employees therein, and the estimated number of employees in each classification. If all positions in any classification are not proposed to be included in the unit, lists of descriptions of the positions to be included and excluded shall be set forth.

(4) The names, addresses and telephone numbers of employee organizations other than petitioner who, to petitioner's best knowledge and belief, claim to represent any of the employees in the allegedly appropriate unit and a brief description, if known, of the written agreements, if any, covering any employee in such unit.

(5) Any other relevant facts.

(6) A statement of the action or remedy sought from the Board.

(C) The foregoing information may be furnished in MLRB Form 2.

1.04 *Petition of Public Employer.* (A) Verification of Petition - A petition for unit determination shall be in writing, signed and duly acknowledged by a notary public or justice of the peace and shall contain a declaration by the person signing it under penalty of perjury that its contents are true and correct to the best of his knowledge and belief.

(B) Content of Petition - The original and four (4) copies shall be filled with the Board, and shall contain -

(1) The name, address and telephone number of the petitioning public employer and of one designated representative authorized to receive notices or requests for information.

(2) A description of the employee representation unit claimed to be appropriate, the estimated number of employees in said unit, the classifications of employees therein, and the estimated number of employees in each classification. If all positions in any classification are not proposed to be included in the unit, lists of descriptions of the positions to be included and excluded shall be set forth.

(3) The names, addresses and telephone numbers of any employee organizations who, to petitioner's best knowledge and belief, claim to represent any of the employees in the allegedly appropriate unit, and a photostatic copy of a duly executed contract covering any employees in such unit or units will be required.

(4) An allegation that one or more employee organizations have presented a claim to be recognized as the representative of a majority of employees in a bargaining unit.

(5) Any other relevant facts.

(6) A statement of the action or remedy sought from the Board.

(C) The foregoing information may be furnished in MLRB Form 2.

1.05 *Showing of Interest.* (A) Required Proof - Petitions filed by an employee or employee organization shall contain written proof that said organization represents 30% of the regular employees in the proposed unit.

(B) Form of Proof - Such proof need be filed with the Board only and shall include one of the following: a copy of effective membership cards, a list of employees authorizing current payroll deductions for membership dues, or authorization cards or petitions containing the printed name and signature of employees. Any form of proof filed with the Board pursuant to this rule shall contain, as a minimum, (i) the signature of the employee, (ii) the typewritten or printed name of that employee, and (iii) the date each respective signature thereon was obtained. Any signature which is undated or which shows that it was obtained more than six (6) months prior to the filing of the showing of interest with the Board shall be deemed invalid for the purposes of calculating the requisite percentage for a proper showing of interest.

(C) Acceptance of Proof - The determination whether such proof is satisfactory shall be made administratively, and shall only be subject to review by the Board.

1.06 *Service of Petition.* (A) Petition of Employee or Employee Organization - A petitioning public employee or public employee organization shall serve a copy of the petition on the public employer within three (3) working days of the date of filing of petition with the Board, and shall file proof of service with the Board. Proof of service, in the form of either a certified mail receipt or other appropriate form, shall be furnished to the Board.

(B) Petition of Employer - The petitioning public employer shall cause copies of the petition to be posted at work locations where notices are normally posted for the benefit of employees in the appropriate unit or at other work locations mutually agreed upon by the parties and approved by the Executive Director. The petitioning public employer shall serve a copy of said petition upon any employee organization(s) identified in § 1.04(B)(3) of these rules and shall file a statement of said posting and said service with the Board at the time the petition is filed.

1.07 *Review and Posting.* The Board shall maintain an official bulletin board upon which it shall post a true copy of each petition when it has been determined to meet the requirements of the Act and these rules, and it shall note and stamp upon such copy the date of posting. The petition shall be removed from such posting when the unit has been agreed upon by the parties or a unit determination hearing conducted.

1.08 *Intervenors.* (A) Applicable Rules - A motion to intervene to seek consideration as a majority representative may be filed as hereinafter set forth.

(B) Form and Filing of Intervention - A motion to intervene shall be in writing and shall be filed with four (4) copies with the Board.

(C) Required Proof - Written proof that an organization represents ten (10) percent of the regular employees in the unit proposed by the petition which initiated the representation proceeding must accompany the motion.

(D) Form of Proof - Such proof need be filed with the Board only and shall include one of the following: copies of currently effective membership cards, a list of employees authorizing current payroll deductions for membership dues, or authorization cards or petitions containing the printed name and signature of employees. Any form of proof filed with the Board pursuant to this rule shall contain, as a minimum, (i) the signature of the employee, (ii) the typewritten or printed name of that employee, and (iii) the date each respective signature thereon was obtained. Any signature which is undated or which shows that it was obtained more than six (6) months prior to the filing of the showing of interest with the Board shall be deemed invalid for the purposes of calculating the requisite percentage for a proper showing of interest.

(E) Acceptance of Proof - The determination whether such proof is satisfactory shall be made administratively, and shall only be subject to review by the Board.

(F) Time of Filing - A motion to invervene shall be filed no later than ten (10) working days from the date of posting of the petition, as set forth in § 1.07 above.

Service of Motion - Within three (3) working days from date of filing of the motion to intervene with the Board, an intervenor shall serve a copy of its motion to intervene upon the petitioner and, where a petitioner is a public employee or public employee organization, upon the public employer and shall file proof of service with the Board. Proof of service, in the form of either a certified mail receipt or other appropriate form, shall be furnished to the Board.

(H) Review of Motion - Upon the filing of a motion to intervene, the Board administratively shall review the same for compliance with the Act and these rules and take appropriate action thereon which may include approval or denial of the motion.

(I) Posting of Motion - The Board shall post a true copy of the motion to intervene upon its bulletin board in accordance with the Act and these rules.

*1.09* *Hearing Procedures.* (A) Setting of Hearing on Unit Determination - The Board may cause a hearing to be held and notice of hearing to be issued, which shall be delivered to the parties and shall include:

(1) A statement of the time, place and nature of the hearing;
(2) A statement of the unit claimed by the petitioner to be appropriate; and
(3) The names of the parties as determined by the Board.

(B) Posting or Amending of Notice - Such notice also shall be posted on the bulletin board, and a copy mailed to the employer involved and to any qualified employee organization that has previously requested notice of all proceedings on the petition. Petitions may be amended with permission of the Board prior to or at the hearing, and the Board may order the consolidation of petitions.

(C) Conduct of Hearing - A hearing will be conducted by the Executive Director, or his designee, acting as a hearing examiner.

(D) Nature of Hearing - The hearing shall be investigatory and not adversary. Its purpose is to develop a full and complete factual record. The rule of relevancy is paramount. There are no burdens of proof, and technical rules of evidence shall not apply.

(E) Rights of Parties - Any party to the hearing shall have the right to be represented by counsel or by other representatives, to examine and cross-examine witnesses, and to offer documentary and other evidence. Stipulations may be offered with respect to any issue. The hearing examiner shall allow oral argument with appropriate limitations, and, after consultation with the parties, may permit briefs to be submitted, in which case the parties shall be granted adequate time for filing same.

(F) Decision - The hearing examiner shall issue a decision to the employee, employee organization(s) and public employer concerned within a reasonable time from the conclusion of the hearing, dismissing the petition, determining the appropriate unit, directing the election including organizations that shall appear on the ballot if an election is required, and may take other appropriate action.

(G) Misconduct at a Hearing: Refusal of Witness to Answer Questions - Misconduct at any hearing before the Executive Director or his designee shall be grounds for summary exclusion from the hearing. Such misconduct of an aggravated character, when engaged in by an attorney or other representative of a party, shall be grounds for suspension by the Board from further practice before it after due notice and hearing. The refusal of a witness at any such hearing to answer any question which has been ruled to be proper shall, in the discretion of the Executive Director, or his designee, be grounds for striking all testimony previously given by such witness on related matters.

1.10 *Appeal.* (A) Who May Appeal - Any party in interest aggrieved by any ruling or determination of the Executive Director under § 966, § 979-E or § 1024 of Title 26 Maine Revised Statutes may appeal, in writing, within fifteen (15) calendar days of the announcement of the ruling, determination or decision, to the Maine Labor Relations Board.

(B) Notice of Hearing - The Board shall within a period of time not to exceed thirty (30) calendar days from the announcement of the ruling hold a hearing having first caused notice of the time and place of such hearing to be given to all parties in interest to the hearing which shall be held in accordance with Rule 4.07 (Prohibited Practice Complaints).

(C) Rights of Parties to the Hearing - Any party to the hearing, as determined by the Board, shall have the right to be represented by counsel or by other representatives, to examine and cross-examine witnesses, to offer documentary and other evidence. In the discretion of the Board any other person or organization may be allowed to intervene in said hearing and to present testimony. Stipulations may be offered with respect to any issue. Parties may request the issuance of subpoenas. Technical rules of evidence shall not apply, but the burden of proof shall rest with the appealing party. The Board or its Executive Director shall allow oral argument with appropriate limitations, and after consultation with the parties may permit briefs to be submitted, in which case the parties shall be granted adequate time for filing same.

(D) Powers of the Chairman - The Chairman shall have all the powers set forth in § 4.10 (Prohibited Practice Complaint Rules).

(E) Decision and Order of the Board - The Board shall issue its decision and order, in writing, pursuant to and consistent with its powers under § 968 of the Act. A decision shall be made within thirty (30) days of the close of the hearing and shall include findings of fact and shall either affirm or modify the ruling or determination of the Executive Director and specify the reasons for such action. A copy of such decision shall be mailed to all parties in interest or their designated representatives.

1.11 *Bar to Certification Attempts.* No question concerning representation may be raised within one year of a certification or attempted certification.

1.12 *Contract Bar; Time to File.* A valid collective bargaining agreement between a public employer and a public employee as defined in the Act governing the wages, hours and/or other terms or conditions of employment of employees in an appropriate bargaining unit shall bar the filing of a petition for unit determination, a petition for certification, or a petition for decertification of a majority representative for such unit during the term of such agreement, not exceeding three (3) years, or, in the case of state employee, university employee and academy employee collective bargaining, for the term of such agreement, said term not to exceed two (2) years. A petition for unit determination, a petition for certification or a petition for decertification may only be filed during a period beginning not earlier than ninety (90) days and ending not later than sixty (60) days before the expiration date of any such agreement.

1.13 *Unit Clarification.* (A) Where there is a certified or currently recognized bargaining representative and where the circumstances surrounding the formation of an existing bargaining unit are alleged to have changed sufficiently to warrant modification in the composition of said bargaining unit, any public employer, any party with status as a petitioner or intervenor under an initial unit determination proceeding or any recognized or certified bargaining agent may file a petition for a unit clarification provided that the parties are unable to agree on appropriate modifications and there is no question concerning representation. Unit clarification petitions may be denied if (a) the description of the job categories contained in the bargaining unit is clear and unequivocal, (b) the question raised should properly be settled through the election process, or (c) the petition attempts to modify the composition of the bargaining unit as negotiated by the parties and the alleged changes therein have been made prior to negotiations on the collective bargaining agreement presently in force.

(B) Showing of interest - No showing of interest is required to accompany a petition for unit clarification; however, the composition and service requirements of that petition shall be consistent with sections 1.03, 1.04 and 1.06 of these rules. Unit clarifications shall not be filed with such frequency as to constitute harrassment.

1.14 *Effective date.* These rules shall become effective October 12, 1972, and as most recently amended on October 5, 1976.

## CHAPTER 2. DECERTIFICATION PETITION RULES

*Summary:* This chapter contains the rules concerning the decertification process, including the form of petition, the necessary showing of interest and the voting procedure. It also contains references to the limitation on certification attempts and the "Contract Bar" rule.

2.01 *Filing.* A petition for decertification alleging that an exclusive bargaining agent is no longer the representative of the employees in a bargaining unit may be filed by an employee organization, a single employee, or a group of employees or their representative. A petition for decertification shall be in writing; signed an d duly acknowledged by a notary public or justice of the peace and shall contain a declaration by the person signing it under penalty of perjury that its contents are true and correct to the best of his knowledge and belief. The original and four (4) copies shall be filed with the Board and, within three (3) working days from the date of such filing, the petitioner shall serve a copy of its petition upon the exclusive bargaining agent, the public employer, and any organization who, to petitioner's best knowledge and belief, claims to represent any employees in the bargaining unit. Proof of service, in the form of either a certified mail receipt or other appropriate form, shall be furnished to the Board.

2.02 *Content.* (A) The petition for decertification shall contain:

(1) The name, address and telephone number of the petitioner and the representative or prospective bargaining agent as it will appear on the ballot.

(2) The name and address of the exclusive bargaining agent.

(3) The name and address of the public employer, a description of the certified bargaining unit involved and the approximate number of employees therein.

(4) The name, address and telephone number of any employee organization, other than the exclusive bargaining agent, who to petitioner's best knowledge and belief claims to represent any employees in the bargaining unit.

(5) The expiration date of any written agreement covering employees in the bargaining unit.

(6) An allegation that the exclusive bargaining agent no longer is the majority representative of the employees in such unit.

(7) Any other relevant facts.

(B) This information may be supplied on MLRB Form 5.

2.03 *Showing of Interest.* At the time of filing of a petition for decertification, the petitioner shall submit to the Board evidence of the kind provided in § 1.05 (B) hereof that at least 30% of the employees in the unit do not desire to be represented in their employment relations by the existing bargaining agent. Any showing of interest filed with the Board pursuant to this rule shall contain, as a minimum, (i) the signature of the employee, (ii) the typewritten or printed name of that employee, and (iii) the date each respective signature thereon was obtained. Any signature which is undated or which shows that it was obtained more than six (6) months prior to the filing of the showing of interest with the Board shall be deemed invalid for the purposes of calculating the requisite percentage for a proper showing of interest. If such evidence is not timely submitted, the Board may dismiss the petition.

2.04 *Voting Procedure.* Whenever 30% of the employees in a bargaining unit petition for a bargaining agent to be decertified, the procedures for conducting an election on the question shall be the same as the procedures for conducting an election for a bargaining agent, set forth hereinafter in Rule 3.01 et. seq. The decertification petition procedures and election techniques employed shall be the same without consideration of whether the bargaining agent facing challenge is certified by the Maine Labor Relations Board or attained its status through voluntary recognition. In order to maintain its status as bargaining agent, the bargaining agent facing challenge must prevail by a majority of the valid votes of those present and voting in the election. If the incumbent bargaining agent obtains a majority of the valid votes of those present and voting in the election, the Executive Director shall certify or recertify it, as the case may be, as the bargaining agent and the one-year bar of Rule 3.05 and of § 967, ¶ 2, of the Public Employees Labor Relations Act, § 979-F, ¶ 2, of the State Employees Labor Relations Act and § 1025, ¶ 2, Sub-¶ D, of the University of Maine Labor Relations Act shall apply. If the incumbent bargaining agent fails to obtain a majority of the valid votes of those cast in the election, it shall forthwith be decertified by the Executive Director. Any other prospective bargaining agent obtaining a majority of votes cast in said election shall forthwith be certified as the bargaining agent for the bargaining unit. Questions of representation raised by an election petition and a decertification petition for the same bargaining unit shall be resolved in one election with the exclusive bargaining agent deemed to have an adequate showing of interest to appear on the ballot. The certified or recognized incumbent exclusive bargaining agent shall be given first priority in the placement on the ballot.

2.05 *Bar to Decertification Attempts.* No question concerning representation may be raised within one year of a certification or attempted certification. An election in which the incumbent bargaining agent is decertified and in which no other prospective bargaining agent appears on the ballot shall not be considered a certification or attempted certification within the meaning of this rule or of § 967, ¶ 2, of the Public Employees Labor Relations Act, § 979-F, ¶ 2, of the State Employees Labor Relations Act or § 1025, ¶ 2, Sub-¶ D, of the University of Maine Labor Relations Act.

2.06 *Contract Bar; Time to File.* A valid collective bargaining agreement between a public employer and a public employee as defined in the Act governing the wages, hours and/or other terms or conditions of employment of employees in an appropriate bargaining unit shall bar the filing of a petition for unit determination, a petition for certification or a petition for decertification of a majority representative for such unit during the term of such agreement, not exceeding three (3) years, or, in the case of state, university or academy employee collective bargaining, for the term of such agreement, said term not to exceed two (2) years. A petition for unit determination, a petition for certification or a petition for decertification may only be filed during a period beginning not earlier than ninety (90) days and ending not later than sixty (60) days before the expiration date of any such agreement.

2.07 *Effective Date.* These rules shall become effective October 12, 1972, and as most recently amended on June 30, 1978.

## CHAPTER 3. ELECTION RULES

*Summary:* This chapter contains rules related to the election process. They cover the petitioning process, intervention, form of election and notice thereof, voter eligibility, conduct of the election, and report and objection thereto. The rules also contain references to mail balloting, run-off elections, certification and the limitation on certification attempts.

3.01 *Form of Elections.* (A) All elections shall be by secret ballot, at times, places, and in such manner as the Board may direct, and shall be conducted by the Executive Director or, in his absence or disability, by such other person(s) as may be designated by him or by the Board, whose determination of all questions shall be subject to review by the Board, pursuant to an appeal by an aggrieved party.

(B) All elections shall be conducted in accordance with the provisions of Title 26, Maine Revised Statutes Annotated, § 967, ¶ 2, § 979, Sub-§ F, ¶ 2 and § 1025, ¶ 2. The elections shall be conducted upon the signed request of a public employer alleging that one or more public employees or public employee organizations have presented to it a claim to be recognized as a representative of a bargaining unit of public or state employees, or upon signed petition of at least 30% of a bargaining unit of public or state employees that they desire to be represented. When an election request is received by the Board from a public employer or from public employees, their agents, or representatives, the request or petition (absent the showing of interest portion, if detachable) shall be dated and posted at the offices of the Board. If an election is sought by submission of a petition with the aforesaid 30% showing of interest, that petition, or any other showing of interest, must contain, as a minimum, (i) the signature of the employee, (ii) the typewritten or printed name of that employee, and (iii) the date each respective signature thereon was obtained. Any signature which is undated or which shows that it was obtained more than six (6) months prior to the filing of the showing of interest with the Board shall be deemed invalid for the purposes of calculating the requisite percentage required hereby. The time periods set forth in this rule shall be subject to waiver for cause by the Board or by the Executive Director on their own motion or on motion of a party to the election. The determination whether such proof is satisfactory in form or quantity shall be made administratively and shall only be subject to review by the Board.

(C) Any organization seeking to appear on the ballot, other than as is provided in Rule 3.01(B) or Rule 2.04, under the provisions of Title 26, M.R.S.A., § 967, ¶ 2, Sub-¶ 2, § 979, Sub-§ F, ¶ 2, Sub- ¶ B or § 1025, ¶ 2, Sub-¶ B with a 10% showing of interest, shall present said showing of interest to the Maine Labor Relations Board within seven (7) working days from the date of the official posting of the election request or petition, as required by Rule 3.01(B), above. If an election request is received by the Maine Labor Relations Board prior to the determination of an appropriate bargaining unit, the official posting date shall be determined to be the first day after the appeals period of a unit determination report has expired or the first day after an Agreement on Appropriate Bargaining Unit has been filed with the Maine Labor Relations Board. Said showing of interest under the 10% rule provided in § 967, ¶ 2, Sub-¶ 2, § 979-F, ¶ 2, Sub- ¶ B or § 1025, ¶ 2, Sub-¶ B shall be dated and of the same manner and form as prescribed in Rule 3.01(B), above.

(D) For purposes of State employee and University employee collective bargaining, the Executive Director shall consider (i) the number of persons to be voting in a given election, (ii) the nature and location of the work station(s) where these employees are normally employed, (iii) the number of employees at each work station, (iv) the expressed desires of the parties, if any, and (v) the geographical distribution and location of the work station(s); he shall then determine whether all or any part of the election shall be by on-site election or by mail ballot.

(E) A petition for an election shall be in writing; signed and duly acknowledged by a notary public or justice of the peace and shall contain a declaration by the person signing it under penalty of perjury that its contents are true and correct to the best of his knowledge and belief. The original and four (4) copies shall be filed with the Board and, within three (3) working days from the date of such filing, the petitioner shall serve a copy of its petition upon the exclusive bargaining agent, the public employer, and any organization who, to petitioner's best knowledge and belief, claims to represent any employees in the bargaining unit. Proof of service, in the form of either a certified mail receipt or other appropriate form, shall be furnished to the Board.

(F) The petition for an election shall contain:

(1) The name, address and telephone number of the petitioner and the representative as it will appear on the ballot.

(2) The name and address of the public employer, a description of the certified bargaining unit involved and the approximate number of employees therein.

(3) The name, address and telephone number of any employee organization, who to petitioner's best knowledge and belief claims to represent any employees in the bargaining unit.

(4) The expiration date of any written agreement covering employees in the bargaining unit.

(5) Any other relevant facts.

(G) This information may be supplied on MLRB Form 5.

3.02 *Voter Eligibility and Eligibility List.* (A) The employees eligible to vote shall be those who were employed on the last pay date prior to the filing of the petition and who remain on the payroll on the date of the election, and meet the requirements set forth in Title 26, M.R.S.A., § 962, ¶ 6, defining "public employee," § 979-A, ¶ 6, defining "state employee" or § 1022, ¶ 11, defining "university employee" or "academy employee."

providing, nevertheless, if the period of time between the date of the filing of the petition and the date of the election exceeds six months, then the aforesaid eligibility requirement applying to employees on the last pay date prior to the filing of the petition shall be waived. (B) At least ten (10) working days prior to the election or mailing of ballots, the employer shall furnish, to each labor organization which is a party to the proceeding and to the Executive Director, a list of the names and addresses of the employees in the appropriate unit who are on the payroll on the pay period prior to the setting of the election by the Executive Director and who are also on the payroll at the time of the submission of the list. In case of mail balloting, the Board may accept pre-addressed, gummed labels from the employer in satisfaction of this requirement, or, in lieu thereof, may demand the list of eligible voters, as determined herein, up to fifteen (15) working days prior to the date of mail ballot distribution.

(C) Unless otherwise specified, the term "days" in being determinative of any portion of these Rules and Procedures shall mean calendar days; "working days" shall mean those days when State offices in Augusta are open for business.

*3.03* *Notice of Election.* (A) Not less than fifteen (15) calendar days prior to any election (or prior to the distribution of ballots for any election to be conducted by mail) said election being organized in accordance with Title 26, M.R.S.A., § 967, § 979-F or § 1025, the Executive Director will cause to be prepared and distributed a Notice of Election specifying the date(s) and place(s) thereof; if an on-site election, the hours and polls will be open; the classification(s) or category of employees in the appropriate unit for which the election is to be conducted; rules concerning eligibility to vote; a sample ballot; and such additional information and instructions as the Executive Director may deem appropriate.

(B) Copies of the Notice of Election and the sample ballot will be sent to all employee organizations appearing on the ballot and to the public employer, and copies of the Notice of Election and the sample ballot will be posted at the offices of the Maine Labor Relations Board at least fifteen (15) days prior to the election. The public employer shall cause copies of the initial Notice of Election and the sample ballot [ prior to their containing notice of parties filing as intervenors under the provisions of Rule 3.01(C) ] to be posted for at least ten (10) calendar days prior to the election or distribution of ballots at work locations where notices are normally posted for the benefit of employees in the appropriate unit. This posting requirement may be modified by mutual written agreement of management and the parties appearing on the ballot filed with and approved by the Executive Director or the Board, or in the absence of such agreement, said modification may be made by the Executive Director in such a way to provide adequate dissemination to the employees involved.

*3.04* *Ballot Format.* Ballots shall be prepared and issued by the Executive Director. Ballots shall contain the name of each representative and the choice of "no representative." The place of priority on the ballot shall be determined by the chronological filing or appearance on the dockets of the Board, but with the petitioner taking first priority, except as provided in Rule 2.04. In a run-off election, the place of priority shall be determined by the sequence appearing on the ballot at the prior inconclusive election.

3.05 *Conduct of Election.* (A) Polling Area - Prior to the commencement of the election, the Executive Director shall designate the polling area(s) and no electioneering of any kind shall be permitted within this area. Any violation of this rule by any party or its representative or agent may be grounds for setting aside the election. In the event it is necessary to conduct the election at more than one location, the ballots from each election location shall be sequestered by the Executive Director or his designee, prior to counting, by being sealed in an envelope or other appropriate container (as determined by the Executive Director or his designee) and being hand delivered or sent by registered mail to the Maine Labor Relations Board where the ballots will all be counted simultaneously and at a time determined by the Executive Director or by the Board. If the election is conducted at only one election site, the ballots may be counted and the results certified pursuant to § 967, ¶ 2, § 979-F, ¶ 2, Sub-¶ B or § 1025, ¶ 2, Sub-¶ B, of Title 26, M.R.S.A. as soon as the polls are closed.

(B) Election Observers - Each party to the election may, at its discretion, be represented by one (1) observer at each polling place. A party so represented may designate that observer as the agent or representative for the purpose of observing the count of the ballots and for certifying, on a form to be supplied by the Board, the accuracy of said count. A party represented by more than one observer may designate one of the observers as the agent or representative for the purpose of observing the count of the ballots and for certifying, on a form to be supplied by the Board, the accuracy of said count. In the event there are multiple election locations and/or a combination of on-site elections and mail ballots, the parties may designate those election observers who shall be present at the counting of either the sequestered ballots and/or the mail ballots cast in the election. In the case of employer observers, they shall be persons without supervisory authority over the employees who are voting, or other appropriate persons who are not on the list of eligible voters.

(C) Mail Ballots - In the event mail ballots are used in the election, the Notice of Election provided in Rule 3.03 will so state, and said notice will also indicate the date the ballots will be mailed or distributed to the prospective voters and the latest date on which the completed ballots must be received at the offices of the Maine Labor Relations Board for purposes of being counted. The format of mail ballots shall be the same as provided in Rule 3.04 with the exception that the ballots shall be returned to the Board in two (2) envelopes (unless the parties otherwise agree and obtain the consent of the Maine Labor Relations Board or its Executive Director) as follows: the first and smaller envelope will contain the voted ballot and will be marked or designated "Secret Ballot Envelope" with such additional instructions thereon as are deemed necessary by the Executive Director or the Board; the second and larger envelope will be the mail envelope in which the Secret Ballot Envelope is placed and mailed to the Board. The mail envelope shall be pre-addressed and postage paid and shall have a space thereon which identifies the voter by name and employer and/or such additional identifying marks as the Board or its Executive Director shall, from time to time, deem necessary. Voter failure to comply with the identity requirements on the "Mail Envelope" or destruction of any identifying mark thereon may be sufficient cause to disqualify the ballot contained therein from being counted. Once received at the offices of the Maine Labor Relations Board, the mail ballots will be identified and segregated according to the bargaining unit involved. At the time designated for counting the ballots as provided in ¶A of this Rule, the "Mail Envelope" will be authenticated by comparison with list of eligible voters, and the "Secret Ballot Envelope" will be removed from the "Mail Envelope" and deposited in a suitable container along with other "Secret Ballot Envelopes" from the same election in order to preserve the anonymity of the voter. The "Secret Ballot Envelope" will then be opened, at random, and the results recorded as provided in ¶ B, above. All challenges to mail ballots which are based on or concern the identity of the voter or voter eligibility, and which may be made pursuant to Rule 3.06, must be raised prior to the removal of the "Secret Ballot Envelope" from the "Mail Envelope."

3.06 *Challenged Ballots.* (A) Challenges - Any prospective voter may be challenged for cause. A challenged voter shall be permitted to vote but his ballot shall be sealed by him in a separate challenged ballot envelope on which the voter is identified and the cause of challenge disclosed, and the employee shall then report to the Executive Director or person duly designated by the Board to conduct the election, and will then be allowed to cast his challenged ballot envelope into the container with the regularly cast ballots. If the challenged ballots are insufficient in number to affect the result of the election, then no determination with respect to them shall be made. If the challenged ballots are sufficient in number to affect the result of the election, the Executive Director or other person duly designated by the Board to conduct the election shall deliver the challenged ballot envelope(s) to the Board for determination. At a time and place set by the Board, the Board or its designee will examine the challenged ballots by an "expedited preview" procedure in which the ballots are removed from the challenged ballot envelopes, said challenged ballot envelopes having first been covered or otherwise marked to preserve the anonymity of the voter. The Board or its designee will then determine whether the challenged ballots may be determinative of the election by examining each ballot individually, making a report of the contents, and reinserting the ballots into the challenged ballot envelope(s). If this "expedited preview" procedure indicates that the challenged ballots, from their individual markings, will not be determinative of the election, or if by the report of the Board or its designee, the challenger(s) withdraw a sufficient number of their objections to make the remaining ballots no longer determinative of the election, the challenge process shall cease. If the number of challenged ballots remains sufficient to affect the result of the election after the "expedited preview," then the Board shall resolve any remaining challenges. These procedures shall be read in a manner consistent with the threshold requirements in Title 26, M.R.S.A., § 962(6), § 979-A(6) and § 1022(11).

(B) Void Ballots - Ballots which have been mutilated, spoiled, marked with more than one choice, or which do not clearly reveal the intent of the voter may be considered "void ballots" and, when determined as such, shall not be counted for or against any proposition appearing on the ballot, provided that ballots shall be liberally construed in favor of validity. The original determination of "void ballots" status will be determined by the Executive Director or person duly designated by the Board to conduct the election and to supervise the counting of ballots. Any party aggrieved by a "void ballot" ruling may appeal pursuant to § 968, ¶ 4, § 979-G, ¶ 2, or § 1028, ¶ 2, as appropriate.

3.07 *Report of Election and Objection Thereto.* (A) Report of Results - Upon the conclusion of any election, the Executive Director or other person designated by him or by the Board to conduct the election shall prepare a report as to the result of the election. The Executive Director shall cause this report to be served upon the parties. In cases where the right of an employee to vote has been challenged and the challenged ballots are sufficient in number to affect the results of the election, the challenging party will file a written objection with the Board stating the grounds for the challenge(s) pursuant to Sub-§ B, hereof.

(B) Objections - Within five (5) days after the election results are reported by the Executive Director or other person designated by him or by the Board to conduct the election, any party who intends to take an exception to the conduct of an election shall file his written objection with the Board and shall serve same upon all other parties, with proof of service. Proof of service in the form of either a certified mail receipt or other appropriate form shall be furnished to the Board. The objection(s) shall contain a plain statement of the grounds of objection. The Board may, either with or without a hearing, make its determination with respect to the objections or to any challenged ballots. Any defect in making an objection may warrant dismissal by the Board.

3.08 *Challenged Conduct.* All challenges to the conduct of a party to an election shall be by a prohibited practice complaint filed in accordance with Title 26, Maine Revised Statutes, § 968 if under the Public Employees Labor Relations Act, § 979-H if under the State Employees Labor Relations Act or § 1029 if under the University of Maine Labor Relations Act and in conformity with the provisions of Rule 3.07(B) and any other applicable rules and regulations promulgated under either of the foregoing statutory citations. Activities which materially compromise the secret ballot process, effectively disenfranchise eligible voters, or otherwise interfere with a free and fair election shall be grounds for such a challenge.

3.09 *Runoff Election.* (A) Conducting Runoff Election - The Executive Director shall conduct a runoff election when an election in which the ballot provided for not fewer than three (3) choices results in no choice receiving a majority of the valid ballots cast and any objections filed have been disposed of as provided herein.

(B) Eligibility of Voters in Runoff Election - Employees who are eligible to vote in the original election and who are in an eligible category on the date of the runoff election shall be eligible to vote in the runoff election.

(C) Ballot Format in Runoff Election - The ballot in the runoff election shall provide for a selection between the two choices receiving the largest and second larges number of id valid votes.

3.10 *Requirement of Majority.* In all elections a majority of the valid votes cast shall determine the employee representative designated or selected by the employees in the defined appropriate unit. Failure to achieve a majority shall result in the determination that no representative has been designated.

3.11 *Certification of Representative.* The Executive Director, after ascertaining the wishes of the majority of the voting employees, shall certify the results of the election pursuant to § 967, ¶ 2, § 979-F, ¶ 2 or § 1025, ¶ 2, as appropriate. A certification will not be issued unless the wishes of the employees have been ascertained by a secret ballot election and may occur simultaneously with reporting required under Rule 3.07(A). Any objection to such certification may be raised to the Board pursuant to Rule 3.07 and § 968, ¶ 4, § 979-G, ¶ 2 or § 1028, ¶ 2, of Title 26, M.R.S.A., as appropriate, whereupon the objection will be determined by the Board which may affirm, vacate, hold in abeyance, or modify the certification of the Executive Director or take such other action as it may deem appropriate.

3.12 *Bar to Certification Attempt.* No question concerning representation may be raised within one year of a certification or attempted certification.

3.13 *Effective Date.* These rules shall become effective October 12, 1972, and as most recently amended on June 30, 1978.

## CHAPTER 4. PROHIBITED PRACTICE COMPLAINT RULES

*Summary:* This chapter contains rules concerning the complaint, response and hearing process in prohibited practice matters filed with the Board. It also contains references to service of the complaint, notice of hearing, the powers of the chairman to administer oaths and issue subpoenas, and the issuance of decisions and orders by the Board.

*4.01* *Who May File Complaints.* Any public employer, any public employee, any public employee organization or any bargaining agent which believes that any person, any public employer, any public employee, any public employee organization or any bargaining agent has engaged in or is engaging in a prohibited practice as defined in § 964, § 979-C or § 1027 of Title 26, M.R.S.A., as appropriate, may file a complaint with the Executive Director of the Board stating the charges in that regard.

*4.02* *Complaint; Form and Filing.* The complaint shall be submitted in writing to the Board in original and four (4) copies in a manner prescribed by the Board, shall be signed and duly acknowledged by a Notary Public or a Justice of the Peace, and shall contain a declaration by the person signing, under penalty of perjury, that its contents are true and correct to the best of his knowledge and belief. The Complaining party will be expected to support its complaint.

*4.03* *Contents of Complaint.* (A) A complaint shall contain, insofar as is known, the following information:

(1) The full name, address, and affiliation, if any, of the complaining party, and the title of any representative filing a complaint.

(2) The full name and address of the employer or employee against whom the complaint is made.

(3) A copy of any existing bargaining contract or agreement relating to the unit involved in the charge of the prohibited practice.

(4) A clear and concise statement of the facts constituting the complaint, including the date and place of occurrence of each particular act alleged, names of persons who allegedly engaged therein, and the sections, including subsection(s), of the Act alleged to have been violated.

(5) A statement of the relief to which the complaining party deems himself entitled. Such claim for relief shall not limit the powers of the Board vested in it by the Act.

*4.04* *Service of Complaint.* No party shall file a prohibited practice complaint with the Executive Director under the provisions of the Municipal Public Employees Labor Relations Act, the State Employees Labor Relations Act or the University of Maine Labor Relations Act until the complaining party shall have served a copy thereof upon the party against whom such charge is made. Proof of service in the form of either a certified mail receipt or other appropriate form shall be furnished to the Board.

4.05 *Response to Charge and Joint Statement.* The party against whom a complaint has been filed shall file a response to said complaint with the Board in original and four (4) copies and shall serve said response upon the complaining party, within fifteen (15) working days of the date of the filing of the complaint with the Board. Proof of service, in the form of either a certified mail receipt or other appropriate form shall be furnished to the Board. Such response shall fairly meet each unresolved allegation contained in the complaint, and shall include a specific admission, denial, or explanation of each such allegation. Attached to the response should be a joint statment of any matters of agreement reached by the parties. Failure to file a response as provided herein may be grounds for the Maine Labor Relations Board to render a default judgment against the respondent if the Board believes the respondent's failure to answer is due to other than excusable neglect.

4.06 *Investigation and Action on Charge.* The Board may cause its Executive Director to investigate the complaint and take appropriate action thereon, which may include convening of a pre-hearing conference, dismissal of the complaint in whole or in part, entry of an uncontested order, or the issuance of the notice of hearing. Failure of a complainant to participate in a pre-hearing conference as provided herein may be grounds for dismissing its complaint, and failure of a respondent to participate in a pre-hearing conference as hereby authorized may be grounds for entry of a default judgment against said respondent, if in either instance said failure to participate in the pre-hearing conference is due to other than excusable neglect.

4.07 *Setting of Notice and Hearing.* The Board may cause a pre-hearing conference or a hearing to be held and a notice of hearing to be served on the parties by registered or certified mail with return receipt requested. The notice shall include the time, date, and place of the hearing or conference. Failure of a complainant to attend such a hearing or conference may be grounds for dismissal of the complaint and failure of a respondent to attend such a hearing or conference may be grounds for entry of default judgment against said respondent.

4.08 *Rights of Parties.* Any party who has been determined by the Board to be a party to the hearing shall have the right to be represented by counsel or by other representatives, to examine and cross-examine witnesses, to offer documentary and other evidence. In the discretion of the Board any other person or organization may be allowed to intervene in said hearing and to present testimony. Stipulations may be offered with respect to any issue. Parties may request the issuance of subpoenas. Technical rules of evidence shall not apply, but the burden of proof shall rest with the complaining party. The Board or its Executive Director shall allow oral argument with appropriate limitations, and after consultation with the parties may require briefs be submitted, in which case the parties shall be granted adequate time for filing same. If the parties cannot agree on a reasonable time and procedure for the submission of briefs, the presiding officer of the conference or hearing may determine the time and procedure for the filing of briefs. Briefs requested or permitted by the presiding officer of a conference or hearing, shall be filed with Board in original and three (3) copies on or before the date specified, and a copy shall be served on the other party or parties. A document is filed with the Board on the date it is received by the Board. Failure of a complainant to file a brief required by the presiding officer of a conference or hearing may be grounds for dismissal of the complaint and failure of a respondent to file a brief required by the presiding officer of a conference or hearing may be grounds for entry of a default judgment against said respondent.

4.09 *Amendments and Withdrawals.* The Board may permit an amendment to the complaint or response at any time on such terms as may be deemed just and consistent with due process. At the conclusion of the hearing, the complaint or response on motion of a party may be amended as necessary to conform to the evidence. The complaint may be withdrawn by the complaining party with the approval of the Board. If the withdrawal is without the approval of the other party, the withdrawal shall be with prejudice.

4.10 *Powers of the Chairman.* The chairman shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the presentation of books, records and other evidence relative or pertinent to the issues presented to the Board for determination. Witnesses subpoenaed by the Board shall be allowed the same fees as are paid to witnesses in the Superior Court. Any party may file a written application for subpoenas with the Board. The application shall name and identify the witness or the documents sought, or both, and the reason therefor.

No person served with a subpoena issued by the Board shall refuse or neglect to appear or to testify or to produce books and papers relevant to such investigation, inquiry or hearing as commanded in such subpoena with the Board. Upon failure of any party to comply with a subpoena, the Board may disregard all related evidence offered by said party.

4.11 *Stay of Election.* An election may be stayed or set aside by the Board, pending the decision of a prohibited practice complaint relating to the unit petitioned for or relating to alleged irregularities in the selection or decertification of a bargaining agent.

4.12 *Decision and Order of the Board.* The Board shall issue its decision and order, in writing, pursuant to and consistent with its powers under § 968, § 979-H or § 1029 of Title 26, Maine Revised Statutes.;

4.13 *Shortening Time Limits or Staying Further Processing.* The Board may order accelerated action on a claim without regard to the time limits otherwise provided herein, or may order a stay of further processing of a claim on such terms as are appropriate.

4.14 *Misconduct at a Hearing; Refusal of Witness to Answer Questions.* Misconduct at any hearing before the Board shall be grounds for summary exclusion from the hearing. Such misconduct of an aggravated character, when engaged in by an attorney or other representative of a party, shall be grounds for suspension by the Board from further practice before it after due notice and hearing. The refusal of a witness at any hearing to answer any question which has been ruled to be proper shall, in the discretion of the Board, be grounds for striking all testimony previously given by such witness on related matters.

4.15 *Effective date.* These rules shall become effective September 15, 1972, and as most recently amended on October 5, 1976.

## CHAPTER 5. FACT FINDING RULES

*Summary:* This chapter contains rules which govern the fact-finding process, including who may request fact finding, the form of request, service thereof, the setting of the hearing and appointment of fact-finders by the Executive Director. It also has references to the conduct of the hearings, the sharing of costs by the parties, and the form and content of the fact finding report.

*5.01* *Parties to Dispute.* (A) Either party to a dispute may request the Executive Director to assign a fact finding panel in accordance with § 965, § 979-D or § 1026, of Title 26, M.R.S.A., and with the respective rules and regulations promulgated thereunder.

(B) If the parties do not agree to follow the fact finding procedures set forth above and jointly apply to the Executive Director or his designee to waive fact finding under the provisions of Title 26, M.R.S.A., § 965(3) (D), the Executive Director or his designee may, in his discretion, concur with that agreement when substantial negotiating progress has been made prior to fact finding and the number of issues to be presented to an arbitrator or arbitration panel are both reasonable and manageable.

*5.02* *Request for Fact Finding.* (A) The original and five (5) copies of the request for fact finding shall be filed with the Executive Director and shall contain:

(1) The name, address, business and resident telephone numbers of the requesting party.;

(2) The name, address, business and resident telephone numbers of the bargaining representative or chairman of the bargaining team of the requesting party, if different from the requesting party.

(3) The name, address, business and resident telephone numbers of the opposing party to the controversy.

(4) The name, address, business and resident telephone numbers of the bargaining representative or chairman of the bargaining team of the opposite party, if known, and if it differs from the information set forth in subsection 3, above.

(5) A statement indicating if the request is unilateral or joint.

(6) A statement indicating whether the request is for the services of the Maine Board of Arbitration and Conciliation as fact finders, or for the appointment of private fact finders by the Executive Director.

(7) An appended statement indicating the unresolved issues in controversy marked "Issues in Controversy, Exhibit 1" in original and five (5) copies and signed by the requesting party, as designated in subsection 1, above, if the request is unilateral, or signed by both parties, as designated in subsection 1 and 3, above, if the request is joint.

(8) An indication of alternative times, dates and places suitable for the requested hearing; and an indication of which of the foregoing, if any, are acceptable to both parties to the controversy.

(9) The place and date the request was made, the signature of the requesting party and the capacity in which he is acting.

(B) The foregoing information may be supplied on MLRB Form 6.

5.03 *Proof of Service.* Any party making a unilateral request for fact finding shall, before submitting the request for fact finding as set forth in Rule 5.02, above, serve a copy of said request for fact finding upon the opposite party to the controversy. The party requesting fact finding shall submit proof of service in the form of either a certified mail receipt or other appropriate form to the Executive Director simultaneously with the submission of the request for fact finding.

5.04 *Setting of Hearing.* (A) Upon receipt of the foregoing request for a fact finding hearing, the Executive Director shall make arrangements for said hearing by appointing fact finders; setting a time, place, and date for the hearing, and notifying all parties to the controversy and the fact finders of the foregoing information. This notification to the parties and to the fact finders shall be made at last ten (10) working days prior to the date set for the hearing. This ten (10) day limitation is subject to waiver for cause by the Board or Executive Director.

(B) There shall be no unilateral cancellation of a fact finding hearing once the time, date, and place of the hearing have been established, the members of the Fact Finding Board appointed, and the acknowledgement of the receipt of this notification received from each party to the controversy by the Executive Director; however, fact finding proceedings may be cancelled if both parties to the controversy jointly agree to the cancellation and so notify, in writing, the members of the Fact Finding Board and the Executive Director.

5.05 *Submission of Briefs or Statements.* (A) Each party to the controversy shall submit a brief or statement on the unresolved issues in controversy to the opposite party thereto, to each of the appointed members of the fact finding panel, and to the Executive Director at least five(5) working days prior to the date of hearing. This period may be modified by the Board or Executive Director commensurate with any waivers granted under the provisions of § 5.04, above. This brief or statement may contain statements, facts, precedents, and/or other pertinent evidence which the proponent thereof believes substantiates his position with respect to the issues in question, and shall also contain any new issues to be raised by the respondent (non-invoking party) to the fact finding proceeding, if the fact finding proceeding is unilaterally invoked. All issues to be heard in oral argument shall be set forth in this brief or statement.

(B) The party requesting fact finding will submit a copy of the collective bargaining agreement, if any, in effect between it and the respondent to each of the appointed fact finders concurrently with the aforesaid brief or statment required pursuant to Rule 5.05(A).

5.06 *Qualification of Fact Finders.* No person shall serve as a fact finder who shall be from the community involved in the dispute or who may have a conflict of interest arising from the circumstances of the controversy. Employees of public management associations or public employee associations, or subcontractors thereof, shall not be eligible to serve as fact finders.

5.07 *Appointment of Private Fact Finders.* Whenever there shall be a request for private fact finders as set forth in §5.02(6), above, the Executive Director shall appoint these fact finders by making reference to three(3) lists of fact finders maintained by the Board. These three (3) lists shall be marked "Management Representative Fact Finders," "Labor Representative Fact Finders," and "Neutral - Chairman Fact Finders." The Executive Director shall select one person from each of these lists to serve on the fact finding panel; the person selected from the "Neutral - Chairman Fact Finders" list shall be Chairman of the panel. Either party may veto the appointment of the fact finder first selected by the Executive Director to represent it by making an objection to the Executive Director within three (3) days of the notification to the parties of the appointment of the fact finders. If either party exercises a veto as described above, the Executive Director shall fill the vacancy with a binding second selection from the same list.

5.08 *Conduct of Hearings.* (A) Fact finding hearings shall not be public unless all parties thereto and all the fact finders agree to have it public.

(B) While the panel shall not insist on adherence to the legal rules of evidence, it shall, however, base its findings of fact and recommendations upon reliable and credible evidence produced at the hearing.

(C) The Fact Finding Panel may request statistical data and reports on its own initiative in addition to the data regularly maintained by the Bureau of Labor, and shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative or pertinent to the issues represented to them.

5.09 *Costs.* (A) The costs for services of the fact finding panel, including, if any, per diem expenses and actual and necessary travel and subsistence expenses, the costs of hiring the premises where the hearing is conducted, and the costs and expenses incurred in the production and publication of the resulting report (including stenographic expenses) shall be shared equally by the parties to the controversy. The services of the members of the Maine Board of Arbitration and Conciliation are available to the parties without cost.

(B) In the event a fact finding hearing is cancelled by joint agreement of the parties once the time, date and place of the hearing has been established and the members of the Fact Finding Board have been appointed, the aforesaid members to the Fact Finding Board shall be entitled to a minimum of one (1) day's compensation and reimbursement for expenses incurred if such cancellation shall occur within five (5) calendar days of the date of the fact finding hearing. Payment of such costs to the fact finders shall be shared equally by the parties to the controversy.

5.10 *Reports.* (A) A fact finding report shall be submitted in duplicate to each of the parties to the controversy and the original and one (1) duplicate to the Executive Director by the Chairman of the fact finding panel not more than thirty (30) calendar days after the termination of the hearing. This limit may be extended by the Board or Executive Director only in extenuating circumstances upon written request and justification therefor by the Chairman of the fact finding panel submitted not less than seven (7) calendar days before the aforesaid thirty (30) day limit shall have otherwise expired, in an original and five (5) copies. The request shall be acted upon by the Board or Executive Director, who shall rule thereon and attach a copy of the request with the ruling, state whether or not the extension was granted, and, if so, the length thereof, and send a copy thereof to the Chairman of the fact finding panel and to each of the parties to the controversy.

(B) It shall be the responsibility of the Chairman of the fact finding panel to prepare the aforesaid report.

(C) As a minimum the report shall contain:

(1) A clear and concise heading making it readily apparent that the report results from a fact finding hearing.

(2) A clear and concise designation of each of the parties to the controversy.

(3) The name and affiliation of each member of the fact finding panel.

(4) Time, date and place of the commencement and termination of the hearing(s).

(5) Names and capacities of persons appearing for and/or representing each side in the controversy.

(6) Statement of procedures followed prior to the fact finding hearing.

(7) A detailed description of each unresolved issue and/or contract section, if appropriate, noted in the provisions of § 5.02(7), above, indicating the issue, position of each party at the time of hearing, and the ultimate recommendation of the fact finders thereon. Any issues resolved by mutual agreement prior to or at the hearing should also be noted.

(8) Date, place, capacities, and signatures of the members of the fact finding panel, and, in the absence of any one thereof, an indication of whether a minority report will be filed.

*5.11* *Minority Reports.* (A) Minority reports may be submitted as a result of fact finding hearings but shall be prepared at the time and expense of the party so preparing the report.

(B) Minority reports shall be filed with each of the parties to the controversy, with the majority members of the fact finding panel, and with the Executive Director not more than ten (10) working days after the submission of the majority report.

(C) Minority reports shall contain the items stipulated in subsection 5.10(C) (1), (2), (3) and (4), and shall be clearly and obviously marked "Minority Report" in connection with the requirement set forth in subsection 5.10(C) (1), above.

(D) The minority report shall clearly state each issue in which the dissenting member of the fact finding panel disagrees with the majority of the panel and shall state the minority recommendations thereon, and reasons therefor, on an issue-by-issue basis.

5.12 *Post-Hearing Briefs.* (A) Post-hearing briefs submitted after the fact finding hearing may be requested by a majority of the fact finding panel.

(B) Such briefs shall be submitted not more than ten (10) calendar days after the termination of the fact finding hearing.

5.13 *Subsequent Action by the Parties.* The parties shall have a period of thirty (30) days, after the receipt of findings and recommendations from the fact finders in which to make a good faith effort to resolve their controversy. If the parties have not resolved their controversy by the end of said period, either party may, but not until the end of said period unless the parties otherwise jointly agree, make the fact finding recommendations public.

5.14 *Effective date.* These rules shall become effective October 24, 1972, and as most recently amended on October 5, 1976.

# APPENDIX III

# ILLUSTRATIVE STATE LABOR RELATIONS BOARD FORMS AND PETITIONS

MLRB
Form 2

## PETITION FOR APPROPRIATE UNIT DETERMINATION

(To be filed in original and 3 copies with the Executive Director,
Maine Labor Relations Board, State Office Building, Augusta, Maine 04333)

1.

| Petitioner | Designated Representative |
|---|---|
| Name ______ | Name ______ |
| Address ______ | Address ______ |
| ______ | ______ |
| Phone ______ | Phone ______ |

2. Name and address of opposite party hereto, be it municipal employer or the employee unit in which or by whom the affected employees are employed and the name, address and phone number of the representative thereof.

| Public Employer/Employee Unit | Representative |
|---|---|
| Name ______ | Name ______ |
| Address ______ | Address ______ |
| ______ | ______ |
| Phone ______ | Phone ______ |

3. Include a description of the employee unit claimed to be appropriate; the estimated number of employees in said unit, the classifications of employees therein and the estimated number of employees in each classification. If all positions in any classification are not proposed to be included in the unit, lists of descriptions of the positions to be included and excluded shall be set forth. This information may be appended hereto as an exhibit if insufficient space is provided.

4. State the names, addresses and telephone numbers of any (other) employee organization(s) who, to the petitioner's best knowledge and belief, claim to represent any of the employees in the allegedly appropriate unit and a brief description, if known, of written agreements (or a photostatic copy of a duly executed contract appended hereto as an exhibit), if any, covering any employee(s) in any such unit(s).

5. If petitioner is a public employer, petitioner should include an allegation that one or more employee organizations have presented a claim to be recognized as the representative of a majority of employees in a bargaining unit, below.

If petitioner is a public employee or employee organization, proof that the said organization represents 30% of the regular employees in the proposed unit should be set forth below or appended hereto as an exhibit. This may consist of copies of effective membership cards, a list of employees authorizing current payroll deductions for membership dues, or a statement containing the names and signatures of employees.

6. State any other relevant facts pertinent to this Petition.

____________________________________________________________

____________________________________________________________

____________________________________________________________

7. What action or remedy is sought from the Maine Labor Relations Board?

____________________________________________________________

____________________________________________________________

____________________________________________________________

8. Petitioner acknowledges that filing of this Petition certifies that Petitioner, ____________________ (name), and ____________________ (name of opposite party hereto) cannot agree on the appropriate bargaining unit for employees of ____________________ and requests that the Executive Director of the Maine Labor Relations Board resolve the controversy.

Dated at ________________, Maine, this ______ day of ____________, 19___.

Signed ____________________________
in his capacity as:

STATE OF MAINE

____________________, ss: (County)

____________________, 19___

Personally appeared before me the aforenamed petitioner ____________________ (name) in his/her capacity as ____________________ and acknowledged the foregoing Petition to be true to the best of his/her knowledge and belief.

____________________________
Notary Public
Justice of the Peace

MLRB
Form 1

## AGREEMENT ON APPROPRIATE BARGAINING UNIT

(To be filed with the Executive Director, Maine Labor Relations Board, State Office Building, Augusta, Maine 04333)

______________________________
Place

______________________________
Date

This is to certify that ______________________________________ and
Representative of Employer
______________________________________ have agreed that the follow-
Representative of Employees
ing compose an appropriate unit for the purpose of negotiating an agreement under the terms of the Municipal Public Employees Labor Relations Law being Chapter 424, Public Law 1969.

Signed ______________________________
Representative of Employer

______________________________
Representative of Employee

IMPORTANT:
(List Below Positions Covered)

MLRB
Form 3

## VOLUNTARY RECOGNITION FORM

(Copies to the Organization and to the Executive Director, Maine Labor Relations Board, State Office Building, Augusta, Maine 04333)

______________________
Place

______________________
Date

This is to certify that having determined that ______________________ (Name of Unit) is an appropriate unit for collective bargaining purposes and being satisfied that ______________________ (Name of Organization) has adequately demonstrated that the majority of the unit desire the ______________________ (Name of Organization) to represent them for the purpose of collective bargaining, we voluntarily recognize them as the bargaining agent of the ______________________ (Name of Unit).

Signed ______________________
Representative of Employer

MLRB
Form 5

## PETITION FOR ELECTION

(To be filed in original and 3 copies with the Executive Director, Maine Labor Relations Board, State Office Building, Augusta, Maine 04333, and served on any organization or party listed in Items 2, 3 and 5 below)

Parties using this form should determine that its usage is not untimely under the provisions of Title 26, Maine Revised Statutes Annotated, or contrary to the provisions of the Rules and Procedures of the Maine Labor Relations Board.

Petition being filed by:

- Public Employer ☐
- Public Employee(s) ☐
- Public Employee Organization ☐

Type of Election sought:

- Decertification ☐
- Bargaining Agent Election ☐

1. Petitioner

Name ______________________________

Address ______________________________

______________________________

Phone ________________

Name of Petitioner's representative or prospective bargaining agent as it will appear on the ballot

Name ______________________________

Address ______________________________

______________________________

Phone ________________

2. Exclusive Bargaining Agent (if any)

Name ______________________________

Address ______________________________

______________________________

Phone ________________

3. Public Employer

Name ______________________________

Address ______________________________

Phone ________________

City or Town ______________________________

4. Number of Employees in Unit ______

Description of Unit (List jobs or positions included; by job title, not by name of person filling the job): ____________

______________________________________________________________________

______________________________________________________________________

______________________________________________________________________

______________________________________________________________________

5. Additional Employee Organization(s)

List the name, address, and telephone number of any employee organization(s), if any, other than the exclusive bargaining agent, who, to petitioners best knowledge and belief, claim(s) to represent any employees in the bargaining unit.

Name ______________________________

Address ______________________________

Phone ________________

City or Town ______________________________

Name ______________________________

Address ______________________________

Phone ________________

City or Town ______________________________

6. State the expiration date of any written agreement covering employees in the bargaining unit. If a copy is not on file with the Maine Labor Relations Board, enclose a copy.

______________________________________________.

7. If filed by an employee(s) or employee organization, the petition should be substantiated by a showing that at least 30% of the employees in the bargaining unit do/do not desire to be represented in their employment relations by the prospective/existing bargaining agent (strike inappropriate language). Any showing of interest must comply with Section 2.03 or Section 3.01(B), whichever is appropriate, of the Rules and Procedures of the Maine Labor Relations Board. The proof may be appended as exhibits; identify same here.

____________________________________________

____________________________________________

8. State any other relevant facts.

____________________________________________

____________________________________________

Dated at ____________________, Maine, this __________ day of ________________, 19 ___.

Signed ____________________________

in his/her capacity as: ____________________

STATE OF MAINE

____________________, ss: ____________________, 19 ___
(County)

Personally appeared before me the aforenamed petitioner ____________________ in his/her capacity
(Name)

as ____________________, and under penalty of perjury acknowledged the contents of the foregoing Petition

to be true and correct to the best of his/her knowledge and belief.

____________________________
Notary Public
Justice of the Peace

## MEDIATION REQUEST FORM

To be filed in triplicate with the Maine Labor Relations
Board, State Office Building, Augusta, Maine 04333

| | |
|---|---|
| REQUESTING PARTY:<br>Name ______<br>Organization ______<br>Address ______<br>______ Zip ______<br>Telephone ______ | OPPOSITE PARTY:<br>Name ______<br>Organization ______<br>Address ______<br>______ Zip ______<br>Telephone ______ |

DESCRIPTION OF ISSUE(S) TO BE DISCUSSED AT MEDIATION PROCEEDING: List issue(s) in dispute.

| | |
|---|---|
| Date | Signature and capacity of requesting party |

For Maine Labor Relations Board Use Only

| Request received | Request assigned | Mediator Assigned | Number of meetings | Disposition: |
|---|---|---|---|---|
| | | | | |

Comments:

MLRB FORM 9

277

MLRB
Form 6

### REQUEST FOR FACT FINDING BOARD

**(To be filed in original and 5 copies with the Executive Director, Maine Labor Relations Board, Capitol Plaza, Western Avenue, Augusta, Maine 04333)**

1. Petitioner/Requester

Name ____________________
Address ____________________
____________________
Bus. Tel. ____________
Home Tel. ____________

Designated Negotiation Representative, if Different

Name ____________________
Address ____________________
____________________
Bus. Tel. ____________
Home Tel. ____________

2. Respondent (Opposite Party)

Name ____________________
Address ____________________
____________________
Bus. Tel. ____________
Home Tel. ____________

Designated Negotiation Representative, if Known

Name ____________________
Address ____________________
____________________
Bus. Tel. ____________
Home Tel. ____________

3. This is a mutual/unilateral (delete inapplicable word) request for a Fact Finding Hearing under the provisions of Title 26, Maine Revised Statutes Annotated, Section 965, Paragraph 3. The unresolved issues in the controversy should be appended hereto and marked "Issues in controversy, Exhibit 1."

4. A suitable time and place for the hearing will be: ____________________
____________________

Acceptable alternate times and places are: ____________________
____________________
____________________

These times and places have/have not (delete inapplicable word) been approved by both parties hereto.

5. This request is for a Private Fact Finding Board/services of the Board of Arbitration and Conciliation (delete inapplicable phrase).

Dated at ____________, Maine, this ______ day of ____________, 19 ____.

Signature of Petitioner ____________________
in his capacity as ____________________

If a mutual request, Signature of Respondent ____________________
in his capacity as ____________________

## MUTUAL REQUEST TO WAIVE FACT FINDING

To be submitted in triplicate to the Maine Labor Relations Board, State Office Building, Augusta, Maine 04333, prior to the scheduling of any interest arbitration proceeding for which a waiver of fact finding is sought.

*The requesting parties hereby certify that they have been engaged in collective bargaining for either a successor or initial collective bargaining agreement and now mutually apply to waive fact finding under the provisions of Title 26, M.R.S.A., § 965, ¶ 3(D). They further agree to submit the results of any interest arbitration proceedings to the Maine Labor Relations Board as provided in Title 26, M.R.S.A., § 965, ¶ 4; § 979-D, ¶ 4(E), or § 1026, ¶ 4(B).*

**EMPLOYEE ORGANIZATION:**

Name ______________________

Address ______________________

______________________ Zip __________

Telephone ______________________

Signature: ______________________

Date __________ Capacity __________

Is the requesting party the contact person? Yes ☐ No ☐

If no, identify contact person below.

**EMPLOYER:**

Name ______________________

Address ______________________

______________________ Zip __________

Telephone ______________________

Signature: ______________________

Date __________ Capacity __________

Is the requesting party the contact person? Yes ☐ No ☐

If no, identify contact person below.

1. Number of issues at the commencement of negotiations.......................... ______
2. Number of issues remaining after mediation, if mediation was conducted......... ______
3. Number of issues the parties seek to present to arbitration.................... ______
4. Identify below the issues to be presented to arbitration:

| | | |
|---|---|---|
| | FOR MAINE LABOR RELATIONS BOARD USE ONLY | |
| Request Received | Action Taken<br>Waiver of Fact Finding Granted ☐ Denied ☐ | Date |

Comments:

By: ______________________
Executive Director/Designee
Maine Labor Relations Board

MLRB Form 10

ARBITRATION REQUEST FORM

To be filed in quadruplicate with the Maine Board of Arbitration
and Conciliation, State Office Building, Augusta, Maine 04333

| | |
|---|---|
| REQUESTING PARTY: | OPPOSITE PARTY: |
| Name ____________ | Name ____________ |
| Organization ____________ | Organization ____________ |
| Address ____________ | Address ____________ |
| ____________ Zip ______ | ____________ Zip ______ |
| Telephone ____________ | Telephone ____________ |

Is this submission joint? Yes __ No __ or unilateral? Yes __ No __. Have the issue(s) listed hereon been agreed to by the parties? Yes __ No __.

Description of Issue(s) to be discussed at Arbitration Proceeding: List issue(s) in dispute.

Remedy sought:

*Attach four (4) copies each of grievance, contract and other pertinent documents.*

*No request will be formalized or no Board will be appointed until all material is received.*

| | |
|---|---|
| Date:<br>____________ | Signature and capacity of requesting party:<br>____________ |

BAC FORM 1

# APPENDIX IV

# ILLUSTRATIVE CONTRACT PROVISIONS

## Negotiated Contract Provisions
## (Illustrative)

1) Community High School District No. 123, North Chicago, Illinois (1979-81)
2) Saginaw Administrators Group, Saginaw, Michigan (1977-80)
3) The College Community School District, Cedar Rapids, Iowa (1979-80)
4) Lake Orion Community Schools, Lake Orion, Michigan (1978-79)
5) Uniondale Union Free School District, Uniondale, New York (1977-80)
6) Jefferson County Board of Education, Louisville, Kentucky (1976-79)
7) Greenville School District, Greenville, Michigan (1978-81)
8) Board of Education of the Borough of Kinnelon, Kinnelon, New Jersey (1977-79)
9) Board of Education of Verona, Verona, New Jersey (1976-78)
10) Greater Clark County School Corporation, Jeffersonville, Indiana (1978-80)
11) Cedar Grove Board of Education, Cedar Grove, New Jersey (1977-78)
12) The Transcona - Sprinfield School Division No. 12, Transcona, Manitoba (1978)
13) Orleans Parish School Board, New Orleans, Louisiana (1976-79)
14) Orno Independent School District No. 278, Long Lake, Minnesota (1977-79)
15) The Boards of School Trustees of School Districts No. 52 (Prince Rupert), No. 54 (Smithers), No. 88 (Terrace), British Columbia (1979)
16) Gateway Regional Board of Education, Woodbury Heights, New Jersey (1977-79)
17) Glen Clove City School District, Glen Cove, New York (1977-79)
18) Waynesboro Area School District, Waynesboro, Pennsylvania (1978-81)
19) City School District of Albany, Albany, New York (1976-78)
20) Board of Education, Lawton Community Schools, Lawton, Michigan (1978-80)
21) Shaker Heights City School District, Shaker Heights, Ohio (1977-80)
22) Anne Arundel County Board of Education, Annapolis, Maryland (1978-80)
23) Butler Area School District, Butler, Pennsylvania (1978-81)
24) East Grand Rapids Public Schools, East Grand Rapids, Michigan (1978-80)

# ILLUSTRATIVE CONTRACT PROVISIONS

By Bruce M. Venter

This appendix provides examples of contract provisions which were negotiated into public education contracts during the collective bargaining process. In developing these illustrative provisions, the ASBO Negotiations Research Committee gathered over 100 different contractual agreements from school districts and colleges throughout the United States and Canada. These representative clauses were selected from 48 teacher contracts. This latter category included individual contracts negotiated with custodians, clerical, cafeteria workers, bus drivers and other paraprofessional groups. Each major geographic area of the United States as well as Canada was included.

These negotiated provisions are intended solely to be illustrative of typical contractual provisions which result from employer/employee collective bargaining relationships. These provisions are not intended to be definitive either in terms of scope or language construction. They are presented here as examples of the types of contractual clauses that are currently being written. A majority of the contractual provisions presented below appear in most public sector contracts, some are controlled by state or privincial statutory mandates and/or restrictions, and several are unique to the particular bargaining agents involved in the negotiations process.

The order in which these illustrative contract provisions appear bears no relationship as to their significance. The master list for the provisions appears on the facing page.

Illustrative Contract Provision No. 1: Community High School District No. 123, North Chicago, Illinois (1979-81)

## ARTICLE II

## MANAGEMENT RIGHTS

Section 1:

The North Chicago Community High School Teachers' Association recognizes the rights and responsibilities belonging solely to the North Chicago Community High School, District No. 123, Board of Education, and the North Chicago Community High School, District No. 123, Administration, prominent among which, but by no means wholly inclusive, are the rights to hire, promote, discharge or discipline for cause and to maintain the discipline and efficiency of all employees; to decide the location, design, uses of and maintenance of all facilities and properties; to set the school calendar and all other schedules necessary for the efficient operation of the school district; the right to make all financial decisions; to set all budgets; the right to determine general accounting procedure, particularly the internal accounting required by law for reports to the public and governmental bodies at the County, State, and National levels. Such authority shall not be used for the purpose of discriminating against any employee.

Section 2:

The Association recognizes the right of the Board and the Administration to maximum freedom to manage, consistent with due regard for the welfare and interests of the people of the North Chicago Community High School, District No. 123, the student body, and all District employees.

The Board and the Administration will continue to strive for the highest educational standards possible at North Chicago High School. The Board, the Administration, and Department Chairman may advise and consult with the faculty in advance of the effectuation of decisions affecting the educational operation.

Insistence by the Board and the Administration upon full compliance with the Master Contract and with this Management Right's Clause shall not be an objective of or any reason for any strike, slowdown, work stoppage, walkout, picketing, or other exercise of force or threat thereof by the Association or any of its members; nor shall insistence by the Association upon full compliance with provisions of the Teachers' Master Contract be an objective of or reason or cause for any lockout, or punitive, discriminatory or disciplinary action or other exercise of force or threat against any employee; provided however, that nothing in this paragraph shall be deemed to modify or limit any right secured to either the Board or the Association in its agreements made during annual contract negotiations or which have been set forth as Board Policy and/

or part of the Teacher's Master Contract.

Section 3:

Any change in Local, County, State, or Federal laws may necessitate a change or elimination of any one section of the Master Contract, but shall not affect or negate any other provision in the Master Contract.

Section 4:

It is expressly understood and agreed that all functions, rights, powers, or authority of the administration of the School District and the Board of Education which are not specifically limited by the express language of this Agreement are retained by the Board provided, however, that no such right shall be exercised so as to violate any of the specific provisions of this Agreement.

Illustrative Contract Provision No. 2: Saginaw Administrator's Group, Saginaw, Michigan (1977-80)

## ARTICLE IV - EXTENDED TERM RENEWABLE CONTRACTS

A. The Board agrees to issue administrative contracts on a two-year basis, except as otherwise provided in this agreement, with said two-year contracts to be renewed each year at the May Board of Education meeting, with salary adjustments to be made immediately following contractual agreement with the teaching staff.

B. 1. All administrators during their first year of employment as an administrator, shall be deemed to be in a period of probation for the position to which they were appointed.

2. If at the end of this probationary year the administrators work is unsatisfactory, he may be dismissed as an administrator.

3. Upon satisfactory completion of the probationary period the administrator shall be granted an administrative contract, per the language of Section A above.

## ARTICLE V - PUBLIC RELATIONS ACTIVITIES

Membership in civic organizations is encouraged by the Board and agreement is made to keep salaries competitive so that members of the Group may belong to these organizations and the administrators, along with the Board, profit from the public relations achieved thereby.

## ARTICLE VI - PROFESSIONAL MILEAGE ALLOWANCE

During the three (3) years this agreement is in force, the Board agrees to pay to each member of the Group for the term of their yearly contract, $50.00 per month. This amount is intended to defray in part those expenses incurred in the daily performance of required administrative duties which involve the administrators' automobile usage. Existing amounts above that rate may be continued.

## ARTICLE VII - PERSONAL MEETINGS REGARDING PERFORMANCE IN ADMINISTRATIVE POSITION

A. When called by the Superintendent of his/her designee for a personal conference, the purpose of the conference will be stated.

B. At said conference, it is permitted to have representation present.

Illustrative Contract Provision No. 3: The College Community School District, Cedar Rapids, Iowa (1979-80)

## ARTICLE XV

## COMPLIANCE CLAUSE AND DURATION

A. Savings Clause

If any provision of this agreement is held to be contrary to law, then such provision or application shall not be deemed valid and subsisting. All other provisions or applications shall continue in full force and effect.

B. Waiver

It is hereby acknowledged that this agreement constitutes the parties' understandings and agreements in their entirety, arrived at by the parties after having been afforded unlimited opportunity to negotiate its terms. Accordingly neither the Board nor the Association shall, for the life of this agreement, be obligated to bargain with respect to any subject or matter referred to in this agreement, or to any other matter which, even though properly a subject of collective bargaining, were not within the knowledge or contemplation of either or both of the parties at the time that this agreement was negotiated or signed. However, specific articles may be reopened for negotiation by mutual agreement. It is further agreed that the Board retains exclusively any and all rights and functions not specifically nullified by express provisions of this agreement.

C. Printing Agreements

Three hundred and fifty copies of this agreement shall be printed at the joint expense of the Board and the Association, after agreement of format, within thirty (30) days after the agreement is signed. The agreement shall be presented to all employees now employed or hereafter employed and the Board shall provide the Association with seventy-five of the remaining copies.

D. Notices

Whenever any notice is required to be given to either of the parties to this agreement by the other, pursuant to the provision(s) of this agreement, either party shall do so by telegram or letter at the following designated addresses or at such other address as may be designated by a party in

Illustrative Contract Provision No. 4: Lake Orion Community Schools, Lake Orion, Michigan (1978-79)

## ARTICLE XVI

### Academic Freedom

A. The parties seek to educate young people in the domestic tradition, to foster a recognition of individual freedom and social responsibility, to inspire meaningful awareness of and respect for the Constitution and the Bill of Rights, and to instill appreciation of the values of individual personality.

B. Freedom of individual conscience, association and expression will be encouraged and fairness in procedures will be observed both to safeguard the legitimate interests of the schools and to exhibit by appropriate example the basic objectives of a democratic society.

Illustrative Contract Provision No. 5: Uniondale Union Free School District, Uniondale, New York (1977-80)

## ARTICLE XIX

## EXPERIMENTAL PROGRAMS

The District specifically retains the right to experiment with new methods of organization or instruction. In the event experimental programs are instituted, said experimental programs shall be consistent with the terms of this agreement. In the event the district substantially changes curriculum, in-service training shall be given to all teachers involved.

## ARTICLE XX

## TAYLOR LAW NOTICE

It is agreed by and between the parties that any provision of this agreement requiring legislative action to permit its implementation by amendment of law or by providing the additional funds therefor, shall not become effective until the appropriate legislative body has given approval.

Illustrative Contract Provision No. 6: Jefferson County Board of Education, Louisville, Kentucky (1976-79)

## ARTICLE XI - REDUCTION IN TEACHING STAFF

The Board and the Association agree that any reduction in the teaching staff shall be consistent with and conform to KRS 161.800 and this Agreement.

Section A: When it becomes necessary to reduce the teaching staff the Board shall suspend teachers' contracts in the following order:

1. Those on limited contract having the least seniority within the teaching field affected.
2. Those on continuing contract having the least seniority within the teaching field affected.

Section B: Before vacant teaching positions are filled by new applicants, teachers, whose contracts are suspended, shall have the right of restoration for staffing teaching vacancies for which they are or become qualified in the following order:

1. Those on continuing contract with greater seniority.
2. Those on limited contract with greater seniority.

Section C: Seniority shall be computed from a teacher's first compensable day as a regular teacher in the Jefferson County School System. In the event more than one teacher, subject to suspension of contract, is affected by teachers having the same seniority date, the following in sequence shall be used to determine placement on the seniority list:

1. Date of Board action to employ.
2. Date on Contract received by the Board.
3. Date official job offer received by the Board.
4. Date official job offer accepted.
5. Date of issuance of official job offer.
6. Date of receipt of most recent application.

Seniority for the purpose of this article shall be computed from this list.

Section D: In the event a reduction in teaching staff is necessary the Board will provide the Association with a list showing the seniority of each teacher subject to said reduction.

Section E: While the contract is suspended, a teacher will have the option at the teacher's expense to remain an active participant in all Board and State paid fringe benefit programs to the extent they are available to the teacher from the carriers. The Board and the Association agree to jointly pursue with the appropriate parties the extension of this option to all applicable fringe benefit programs.

Section F: During a reduction in teaching staff, all teachers whose contracts are suspended may apply for employment as substitute teachers and shall be given preference before other substitute teacher applicants are employed.

Section G: Upon return to active employment following suspension of contract, the teacher will be credited with unused accumulated sick leave and will be placed on the proper rank and step of the current salary schedule. Such teacher will not receive increment credit for time spent while the contract is suspended nor will such time count toward the fulfillment of requirements for acquiring continuing contract status.

Illustrative Contract Provision No. 7: Greeneville School District, Greeneville; Michigan (1978-81)

## ARTICLE IV

## Professional Behavior

A. Teachers are responsible for maintaining a continuous high level of professional service to the welfare and benefit of the student body. Teachers, therefore, are responsible to discharge their teaching assignments with professional proficiency and, to this end, to plan adequately and make conscientious efforts to meet as required with children, parents and/or consultants.

B. The Association recognizes the existence of all Board policies regarding a teacher's duties. The weekly time schedule which states the time to be devoted to the various parts of the curriculum shall be followed as closely as possible by all teachers.

C. The Board agrees to provide upon application the necessary funds for teachers attending select professional conferences when such attendance is approved by the administration. Travel, meals, lodging and registration fees shall be deemed appropriate expenses of the Board, as well as the cost of the substitute teacher needed to relieve the participant.

D. A teacher who shall have allegedly committed a breach of discipline in his professional behavior shall at all times be entitled to have present on request his building representative or such other Association representative who is readily available when he is being reprimanded, warned or disciplined for such infraction.

E. No teacher shall be disciplined or reprimanded without just cause. Any such discipline or reprimand shall be subject to the professional grievance procedure through Step 3. All information forming the basis for disciplinary action will be made available to the teacher and the Association. Adverse evaluations shall not be subject to the grievance procedure but shall be handled as provided in Article XIII, Sections D and E.

## Illustrative Contract Provision No. 8: Board of Education of the Borough of Kinnelon, Kinnelon, New Jersey (1977-79)

### ARTICLE II

### NEGOTIATION PROCEDURE

The parties agree to enter into collective negotiations over a successor agreement in good faith effort to reach agreement on all matters concerning the terms and conditions of teachers' employment in accordance with the following procedure:

A. The parties agree to enter into collective negotiations over a successor Agreement in accordance with the provisions of Chapter 123, Public Laws of 1974.

B. The Board and the Association shall meet at reasonable times and negotiate in good faith. Reasonable, relevant data requested by either party shall be supplied by the proper official upon seven (7) days' notice.

C. The parties agree that their representatives will be given the power to negotiate a tentative agreement pending ratification by the majority of the Board and the Association.

D. Should a mutually acceptable amendment to this Agreement be negotiated by the parties, it shall be reduced to writing and signed by said parties and become incorporated as part of this Agreement.

E. The Board and the K.E.A. may have rotating members on the negotiations committee.

F. Only joint or agreed upon press releases regarding negotiations will be made.

G. The time of the next meeting and the agenda will be set at the end of each meeting.

H. Where necessary and possible, there may be two-way communication between meetings.

Illustrative Contract Provision No. 9: Board of Education, Verona, New Jersey (1976-78)

## ARTICLE 1

## RECOGNITION

1:1 Pursuant to Chapter 123, laws of 1974, as amended, the State of New Jersey, known as the New Jersey Public Employer-Employee Relations Act, the Board or Education of the Borough of Verona, Inc., hereby recognizes the Verona Education Association, Inc., as the exclusive and sole representative for collective negotiation concerning the terms and conditions of employment for all personnel under contract to the Verona Board of Education as indicated herein:

Teachers, Nurses, Guidance Counselors, Librarians,
Special Services Personnel, Area Coordinators

but excluding:

The Superintendent, Deputy Superintendent, Principals,
Assistant Principals, Director of Special Services,
Other Full-Time Administrative Personnel, Daily Substitutes,
Secretaries, Custodial and Maintenance Staff, Cafeteria
Workers, Hourly Employees.

## ARTICLE 2

## FUTURE NEGOTIATION AGREEMENT

2:1 The parties agree to enter into collective negotiations over a successor agreement in accordance with Chapter 123, Laws of 1974, as amended, to reach agreement on matters concerning the terms and conditions of teachers' employment.

2:2 The parties mutually pledge that their representatives shall have the authority to make proposals, consider proposals, and make counter-proposals in the course of negotiations.

2:3 The Board shall make the following information available to the Association by December 1: (1) Names and addresses of all teachers; (2) their salaries, positions on Verona and State Guides, previous experience, previous teaching and non-teaching experience credited on Verona's guide; and (3) a copy of all Verona Board of Education policies.

2:4 Both parties agree that representatives of each party shall meet (no more than 10 times during the school year) on request of either party within two weeks of such request for the purpose of reviewing the interpretation and application of the contract. Each party may call five meetings. The party making the request shall submit an agenda at the time the request is made.

2:5 Any change in terms and conditions of employment shall be first negotiated with the majority representative.

Illustrative Contract Provision No. 10: Greater Clark County School Corporation, Jeffersonville, Indiana (1978-80)

## ARTICLE X

## GRIEVANCE PROCEDURE

A "grievance" is a claim by one (1) or more school employees of a violation, a misapplication, or a misinterpretation of the terms of this contract.

The purpose of this grievance procedure is to settle equitably, at the lowest possible administrative level, issues, which may arise from time to time with respect to specific claims of violation, misapplication or misinterpretation of the provisions of this contract, and the application of such procedure shall be strictly limited to the provisions of this contract.

Procedure:

1) Level One. A school employee with a grievance shall initiate this procedure in the following manner:

   a. He shall approach the immediate supervisor concerned and discuss the matter in his own behalf, either personally or accompanied by an Association representative.

   b. In the event that step "a" above is unsuccessful, the employee may file a formal grievance in writing which writing shall be in triplicate with one copy to the Association, one copy to the grievant and one copy to the immediate supervisor. Said formally written grievance shall (1) name the employee involved, (2) state the facts giving rise to the grievance, (3) identify the specific provisions of this contract alleged to be violated, and (4) indicate the specific relief requested.

      A form (see Appendix 3) shall be available from either the Association representative in each building and/or the Principal of such building.

   c. Within ten (10) days of the filing of the formal grievance in writing, a meeting shall take place between the immediate supervisor concerned, the grievant, and if desired by the grievant, the Association representative; and an answer to the grievance shall be given to the grievant in writing within five (5) days.

2) Level Two. If the grievance is not settled at Level One, the grievant may appeal to the school employer by filing written notice with the

Assistant Superintendent for Employee Relations, stating the grounds for appeal. A meeting with the school employer or its designated representative shall be held within fifteen (15) days following the receipt of said notice and grievant and the Association shall receive reasonable notice of the time, place and the date for hearing such appeal.

The school employer's written decision shall be transmitted to the grievant and the Association within ten (10) days.

3) Level Three. If the grievance is not settled at Level One or Level Two, it may be appealed to the school employer by filing written notice with the Superintendent, stating the grounds for appeal. A meeting with the school employer or its designated representative shall be held within fifteen (15) days following the receipt of said notice and grievant and the Association shall receive reasonable notice of the time, place and the date for hearing such appeal. The school employer's written decision shall be transmitted to the grievant and the Association within ten (10) days.

4) Level Four. In the event the grievance is not settled at Level One, Level Two or Level Three, to the satisfaction of the grievant, or if no disposition has been made within the time frame specified in Level Three hereof, the grievant may submit said grievance to the Board of School Trustees within twenty (20) school days after receipt of the Superintendent's decision, or failure to respond within the specified time frame as imposed in Level Three hereof.

The Board shall hold a hearing with the grievant and issue a written decision with twenty (20) days of the hearing. The decision at this level shall be final and binding.

5) Failure To Observe Time Limits

In the event the grievant fails to exhaust his/her remedies under the grievance procedure provided above, or to abide by the time limits with respect to each step, the grievance shall be presumed to be abandoned and the matter shall be settled in accordance with the school corporation's last answer therto.

6) Other Provisions Relating to the Grievance Procedure

a. The school employer and the Association agree that neither party shall be permitted to assert at any level subsequent to the lodging of the initial grievance, any ground or to rely upon any evidence not previously disclosed to the other party.

b. No reprisal of any kind shall be taken by or against any participant in the grievance procedure by reason of such participation.

Illustrative Contract Provision No. 11: Cedar Grove Board of Education, Cedar Grove, New Jersey (1977-78)

## ARTICLE XIII VOLUNTARY TRANSFER OR PROMOTION

1. A list of professional staff vacancies for the ensuing school year will be sent to each school principal and the Association President for posting by March 20. The list will contain vacancies known to the Superintendent of Schools as of March 15.

2. An amended list will be sent for posting at the end of April, May, and June. During July and August the list will be posted in the Central Office only.

3. a. Teachers desirous of a change of position which is considered a promotion shall present a written request to the Superintendent of Schools within two (2) weeks of any such announcement.

    b. Any applicant for a promotional position shall be notified when the position has been filled.

4. Teachers desirous of a voluntary transfer shall submit a written request to the Superintendent of Schools with a copy to the building principal stating the reasons within two (2) weeks of any such announcement.

## ARTICLE XIV INVOLUNTARY TRANSFER OR REASSIGNMENT

1. Notice of an involuntary transfer or reassignment shall be given to the teacher as soon as practicable. The teacher shall have the right to meet with his Association representative and the Superintendent of Schools to discuss the proposed assignment. If not satisfied at this point, the teacher and the Association representative may discuss the proposed assignment with the Board.

2. When an involuntary transfer or reassignment is necessary, a teacher's area of competence, major or minor field of study, length of service in the Cedar Grove Schools, length of service in the particular school building, and other relevant factors shall be considered.

3. An involuntary transfer or reassignment is the legal prerogative of the Board, and no decision of the Board shall be subject to the grievance procedure until the individual has been in the position for at least one full marking period.

## Illustrative Contract Provision No. 12: The Transcona-Springfield School Division No. 12, Transcona, Manitoba (1978)

### 3.04: Placement for Teaching Experience

Teachers on staff and teachers coming on staff shall receive full placement for teaching experience obtained after certification as recognized by the Department of Education up to the maximum of their class.

### 3.05: Experience on Permit or on Letter of Authority

Teachers on staff prior to January 1, 1975 and who have obtained experience on permit or Letter of Authority shall continue being paid for such experience up to but not exceeding the maximum of their class.

### 3.06: Teachers on Letter of Authority or Permit

The salary of teachers employed by the Division on a Letter of Authority or on permit issued by the Department of Education shall be set using the Department of Education grant classification as a guideline and shall be submitted to the Association for final approval prior to official engagement of the teacher by the Board.

### 3.07: Anniversary Date for Increments

Teachers in all classes holding a valid teaching certificate shall proceed from their initial placement on the basic schedule by annual increments effective on either September 1st or January 1st following the accumulation of a minimum of 160 days teaching experience after certification within the Division or prior to coming on staff and providing such experience is recognized by the Department of Education for Grant purposes.

### 3.08: Professional Courses

Teachers who take new professional courses while on staff and with prior approval of the Superintendent of Schools, shall receive payment equal to the tuition for each course successfully completed. Such payment is to be made on the month following submission of marks and receipt by the teacher.

Illustrative Contract Provision No. 13: Orleans Parish School Board, New Orleans, Louisiana (1976-79)

## ARTICLE XVI

## UNIFORMS AND PROTECTIVE CLOTHING

16:1 If any employee is required to wear a uniform, protective clothing, or any type or protective device as a condition of employment, such uniform, protective clothing, or protective device shall be furnished to the employee by the EMPLOYER under the following conditions:

16:2 The cost of maintaining the uniform or protective clothing in proper working condition (including tailoring, dry cleaning, and laundering) shall be paid by the employee.

16:3 The employee must sign for and be responsible for the articles issued to him.

16:4 The employee must reimburse the EMPLOYER for lost articles and/or for articles damaged through negligence or misuse.

16:5 To obtain replacement the damaged or worn-out set must be turned in. If all or any part thereof is not turned in, the employee must pay for replacement with the EMPLOYER retaining ownership of same.

16:6 Upon termination of employment, employee is to return all articles issued and signed for. Employee will be financially liable for full set or any part thereof not returned.

16:7 In view of the requirement that all cafeteria employee must wear uniforms, the EMPLOYER agrees to provide two uniforms for each employee pursuant to the regulations set forth in Article XVI. The EMPLOYER retains and reserves the right to select the type of uniform and to direct the employee as to where such uniform shall be obtained. Replacement of uniforms for the period of this contract shall be at the discretion of the EMPLOYER. Nothing contained herein shall be construed to require the EMPLOYER supply replacement.

Illustrative Contract Provision 14: Orno Independent School District No. 278, Long Lake, Minnesota (1977-79)

## ARTICLE IV

## SCHOOL BOARD RIGHTS

Section 1. Inherent Managerial Rights: The exclusive representative recognizes that the School Board is not required to meet and negotiate on matters of inherent managerial policy which include, but are not limited to, such areas of discretion or policy as the functions and programs of the employer, its overall budget, utilization of technology, the organizational structure and selection and direction and number of personnel.

Section 2. Management Responsibilities: The exclusive representative recognizes the right and obligation of the School Board to efficiently manage and conduct the operation of the school district within its legal limitations and with its primary obligation to provide educational opportunity for the students of the school district.

Section 3. Effect of Laws, Rules and Regulations: The exclusive representative recognizes that all employees covered by this Agreement shall perform the teaching and pupil supervisory services prescribed by the School Board or its designee and shall be governed by the laws of the State of Minnesota, and by School Board rules, regulations, directives and orders, issued by properly designated officials of the school district. The exclusive representative also recognizes the right, obligation and duty of the School Board and its duly designated officials to promulgate rules, regulations, directives and orders from time to time as deemed necessary by the School Board insofar as such rules, regulations, directives and orders are not inconsistent with the terms of this Agreement, and recognizes that the School Board, all employees covered by this Agreement, and all provisions of this Agreement are subject to the laws of the State of Minnesota, Federal Laws, rules and regulations of the State Board of Education, and valid rules, regulations, and orders of State and Federal governmental agencies. Any provision of this Agreement found to be in violation of any such laws, rules, regulations, directives or orders shall be null and void and without force and effect.

Section 4. Reservation of Managerial Rights: The foregoing enumeration of rights and duties shall not be deemed to exclude other inherent management rights and management functions not expressly reserved herein, and all management functions not expressly delegated in this Agreement are reserved to the school district.

Illustrative Contract Provision No. 15: The Boards of Trustees of School Districts No. 52 (Prince Rupert), No. 54 (Smithers), No. 88 (Terrace), British Columbia (1979)

## ARTICLE III - DEFINITIONS

Sec. 1. That for the purpose of this Agreement and unless the context otherwise requires:

Probationary employee shall be defined as a person who is serving a probationary period of thirty working days, for a permanent appointment with the Board.

Sec. 2. Casual employee shall be defined as a person who is employed on a day to day basis and who has an anticipated termination date.

Such casual employees shall only be entitled to the provisions of this Agreement relating to wage rates, hours of work, rest periods, and those benefits to which they are entitled by virtue of Federal or Provincial Government statutes.

Sec. 3. Regular employee shall be defined as a person who has satisfactorily completed thirty (30) working days service with the Board and who is employed on a regular full-time or part-time basis. Regular full-time employees shall be entitled to all benefits of this Agreement. Regular part-time employees shall receive, when eligible, benefit entitlement on a pro rate basis.

Sec. 4. Maintenance staff shall include or mean, unless the context is more clearly specified or limited, Tradesmen, Storemen and other employees working under the Maintenance Department.

Sec. 5. Transportation staff shall mean and include persons employed by the Board to either drive, service or repair buses.

Sec. 6. Custodian staff shall mean and include unless the context is more clearly specified or limited, Custodians of either sex, whether engaged part-time or full-time by the Board.

Sec. 7. Office staff shall mean and include persons employed by the Board to work in the Board offices, Resource Center, or school offices. Prince Rupert District only.

Illustrative Contract Provision No. 16: Gateway Regional Board of Education, Woodbury Heights, New Jersey (1977-79)

## ARTICLE XXI

## SUBSTITUTES

A. Positions which are vacant because teachers are temporarily absent or on leave shall, to the extent possible, be filled by personnel who have fully met the appropriate certification requirements of the New Jersey State Board of Examiners.

B. It is desirable for each teacher to have an uninterrupted preparation period each day. The practice of using a regular teacher as a substitute, thereby depriving him/her of his/her preparation period, is undesirable and shall be discouraged. In those cases where regular substitutes are not available, regular teachers who volunteer may be used as substitutes during their preparation periods. In the absence of volunteers, a teacher may be assigned to serve as a substitute. Volunteers and assigned teachers shall be paid at the rate of five ($5) per teacher period whenever the extra assignments cause them to give up their preparation periot or to teach more than their regularly assigned work periods.

Illustrative Contract Provision No. 17: Glen Cove City School District, Glen Cove, New York (1977-79)

## ARTICLE 10. HEALTH AND DENTAL INSURANCE

These plans are available to any fulltime employee of the District. Part time employees must meet specific requirements of the plan as stated in the current manuals. Enrollment procedure, type of coverage, definition of dependents and other like information may be secured from the current manuals available in the business office of the District.

### A. Health Insurance.

The District has agreed to participation in "The Statewide Plan" for employees of local governments in New York State. This Plan includes Blue-Cross Hospitalization, Blue Shield Surgical-Medical and Metropolitan Life Major Medical Expense. The Health Insurance costs for the Plan shall be paid in full by the District.

### B. Dental Insurance.

The District shall provide dental insurance coverage for the employees only. The schedule of benefits to be as follows:

| | |
|---|---|
| Maximum - | $1,000.00 per calendar year per person. |
| Deductible - | $25.00 per individual. |
| Benefits - | 75% for all covered dental expenses (including peridontal) |
| | 60% for crowns, dentures, repairs to dentures, bridgework |

## Illustrative Contract Provision No. 18: Waynesboro Area School District, Waynesboro, Pennsylvania (1978-81)

### ARTICLE VI - DISCHARGE OR SUSPENSION

### Discharge

6.00 The Employer may only discharge an employee for any cause permitted or not prohibited under the Pennsylvania Public School Code of 1949, as amended, to include immorality, incompetency, intemperance, cruelty, persistent negligence, mental derangement, and persistent and willful violation of the school laws of the Commonwealth of Pennsylvania.

### Discipline

6.01 Employees may not be reprimanded, disciplined, suspended, or discharged without reasonable cause.

Illustrative Contract Provision No. 19: City School District of Albany, Albany, New York (1976-78)

14.9 LEAVE OF ABSENCE WITH PAY PRIOR TO RETIREMENT

14.9.1 With at least 20 years of service credited under the New York State Retirement System, a teacher may use up to 60% of unused accumulated sick leave as the basis for a retirement bonus. The number of days used for said bonus shall not exceed 45.

14.9.2 With at least 25 years of service under the New York Retirement System, a teacher may use up to 60% of unused accumulated sick leave as the basis for a retirement bonus. The number of days used for said bonus shall not exceed 60.

14.9.3 To be eligible for the retirement bonus, a teacher must fulfill the requirements of 14.8.1 above as well as the following conditions:

A. Is eligible for service retirement and who meets the necessary requirements for such retirement as defined by the New York State Retirement System.

B. Has served in the Albany Public School System for a period of not less than 10 (ten) years.

C. Does not retire between the dates of Sept. 1 and June 30 inclusive.

D. At least six (6) months prior to the date of retirement, notifies the Board of Education of his intention to retire and his election to take the retirement bonus and further, executes and files an application for retirement.

Illustrative Contract Provision No. 20: Board of Education, Lawton Community Schools, Lawton, Michigan (1978-80)

## ARTICLE XV

## MISCELLANEOUS PROVISIONS

A. If any provision of this Agreement or any application of this Agreement to any employee or group of employees shall be found contrary to law, then such provision or application shall not be deemed valid and subsisting; except to the extent permitted by law, but all other provisions or applications shall continue in full force and effect.

B. The provisions of this Agreement shall be incorporated into and be considered part of the established policies of the Board. This agreement shall supercede any rules, regulations, or practices of the Board which are contrary to or inconsistent with its terms. It shall likewise supercede any contrary or inconsistent terms contained in any individual teacher contracts.

C. Copies of this agreement shall be printed at the expense of the Board and presented to all teachers now employed or hereafter employed by the Board.

D. Any teachers employed after August 31, 1976, shall join the Lawton Education Association, or pay a sum equivalent to dues, through payroll deduction, to a charity of his/her choice, recognized by the Internal Revenue Service.

Illustrative Contract Provision No. 21: Shaker Heights City School District, Shaker Heights, Ohio (1977-80)

## TRANSFERS

42. Any employee transferred for unjust cause may appeal the transfer through the Grievance Procedure.

Employee-initiated transfer requests or posted vacancies shall be prepared in triplicate on Board of Education forms, with copies to the Dir. of Business Affairs, Union Chief Steward, and the employee.

## FILLING OF VACANCIES--JOB BIDDING

43. During the term of this agreement, except for grounds crew, and except as otherwise provided for in this agreement, full-time twelve (12) month vacancies, if filled, shall be filled with full-time employees. If the job is to be filled and if no one bids for the job, this restriction shall not apply.

44. When a job vacancy occurs, before the Board fills the vacancy, the job vacancy will be posted at each building for a period of three (3) work days listing the Work Station, Pay Classification, Shift Hours and Starting Date. The filling of such vacancies will be based upon:

   a. The record or prior service with the Shaker Schools which might have a bearing on the assignment.

   b. Qualifications of the person for the job to be filled.

   c. Physical capability to perform the job.

   d. Seniority.

In the event that items a, b, and c are equal, seniority shall be used to determine the successful applicant.

Employees shall submit their applications in writing to the office of the Dir. of Business Affairs on or before the deadline listed in the notice.

The filling of vacancies in the busing classification shall be governed by paragraph 34.

45. The Board of Education agrees to notify Local No. 100 of the successful applicant for a position which was posted under the bidding procedure. Upon request from the employee to the Dir. of Bus. Affairs, an employee who contests the appointment will be informed of the reasons for his non-appointment.

## Illustrative Contract Provision No. 22: Anne Arundel County Board of Education, Annapolis, Maryland (1978-80)

### ARTICLE 9

### SICK LEAVE

9.1 Annual Allowance

Unit IV employees shall earn sick leave at the rate of one per day per month of active duty. Unused sick leave shall accumulate from year to year without limitation.

9.2 Pregnancy

Unit IV members shall, at their request, be allowed to use sick leave for absence due to physical disability connected with or resulting from pregnancy. Upon the termination of such disability the employee must return to work unless she resigns or is granted a leave of absence.

9.3 Monthly Notification

Employees shall be notified monthly as to the number of unused accumulated sick leave days at the end of the previous month.

9.4 Illness in Immediate Family

During the year in which it is earned sick leave may be used for illness of members of the immediate family (parent, spouse, sibling, or child).

9.5 Limit for Returning Employees

A Unit IV member who is reemployed within five years of his separation date shall be credited with unused sick leave he had accumulated during his previous employment with Anne Arundel County Public Schools.

9.6 Sick Leave Bank

All Unit IV members on active duty in Anne Arundel County are eligible to contribute to a sick leave bank. Contributors will be permitted to apply for use of the bank for salary payment to cover periods of incapacitating personal illness of the employee during the regularly scheduled duty days, after regular sick leave has been exhausted.

The contribution on the appropriate form will be authorized by the member and continued from year to year until cancelled in writing by the member. Cancellation, on the proper form, may be elected at any time and the member shall not be eligible to use the bank as of the effective cancellation date. Sick leave properly authorized for contribution to the bank will not be returned if the member effects cancellation.

Contributions shall be made between July 1 and November 1 for the first year of operation, thereafter July to September 30. Members returning from extended leave of absence, reassigned employees, and new employees may contribute within thirty (30) days upon reassignment of employment.

The annual rate of contribution may be a maximum of one (1) day per year and must be in whole day increments.

Members shall be permitted to apply for leave from the bank after January 1, 1978. The maximum number of sick days that can be granted from the bank for any one fiscal year will be the remaining number of duty days a member is scheduled to work, in no case will the granting of leave from the bank cause a member to receive more than his annual salary.

Members must use all accumulated sick days before applying for leave from the bank. Application for use of the bank shall be made of the required form and submitted to the approval of committee.

A three-member committee, appointed by the president of SAAAAC, shall have the responsibility of receiving requests, verifying the validity of requests, recommending approval or denial of the request, and communicating its decision to the member of the Director of Personnel. The committee shall develop its rules of procedure and shall give wide distribution to said rules upon approval of the Executive Officers of SAAAAC and the superintendent's Council.

The Director of Personnel shall approve these bank grants as being for incapacitating illness and that sick leave is exhausted, and forward payment authorization to the Payroll Department.

Bank grants will not be automatically carried over from one fiscal year to another. All bank grants will end as of June 30 or the last day of the school year and must be renewed through the approval committee and the Director of Personnel each fiscal year.

If a member does not use all of the days granted from the bank, the unused sick days will be returned to the bank.

Any unused sick leave days remaining in the bank on June 30 will be carried to the next fiscal year.

## Illustrative Contract Provision No. 23: Butler Area School District, Butler, Pennsylvania (1978-81)

### XXI Seniority

### A. Definition

Seniority, is defined as the length of continuous service since the employee's date of hire in the bargaining unit. Seniority shall continue to accrue unless continous service is broken. Continuous service can be broken by the following:

1. An employee quits or resigns.
2. An employee is discharged for just cause.
3. An employee is laid off for a period longer than twenty-four (24) consecutive months unless said employee is off due to an injury on the job or personal illness.
4. An employee fails to return to work, upon recall from a layoff or furlough, within fifteen (15) days after being notified by registered mail by the Employer, unless a satisfactory reason is given.

### B. Grandfather's Clause - Continuous Service

Any employee currently benefiting from non-continuous service seniority purposes will continue to do so.

### C. Continuous Service for Temporary Employees

Temporary or regular part-time employees shall receive credit for time worked provided there is no break in service. Seniority for regular part-time or temporary work sahll be credited by the following formula:

Number of hours worked annually divided by 1800 hours = percent of year

Example:
A part-time secretary working $\frac{900}{1800}$ hours = .5 year credited to seniority

### D. Probationary Employee

All new employees shall be considered probationary employees for a period of sixty (60) calendar days from their first day on the job. Said probationary employees shall be entitled to all the benefits provided in this agreement with the exception that any dismissal would not be subject to the grievance procedure. After sixty (60) days, the probationary employee is considered a regular employee and entitled to all contractual benefits.

E. Secretarial Layoffs or Furloughs

Any layoff or furlough shall be based upon total district seniority but shall be administered within the job classification as outlined in the Recognition agreement, Section I, page 1, of this agreement. The employee having the least seniority shall be the first laid off or furloughed and call back shall be in inverse order of the layoff or furlough. When a vacancy exists within the district classification and there is no one on layoff or furlough status from that classification, then the most senior employee on layoff or furlough status shall be recalled. Employees working less than full time can only bump employees who are working an equal number or fewer days with less seniority within the job classification.

F. Teacher Aides' Layoffs or Furloughs

Any layoff or furlough shall be according to seniority with the last person hired being the first laid off or furloughed and call back shall be in inverse order of the layoff or furlough.

## Illustrative Contract Provision No. 24: East Grand Rapids Public Schools, East Grand Rapids, Michigan (1978-80)

### ARTICLE III

### ASSOCIATION RIGHTS

A. Use of Facilities

The Association may use Board facilities to conduct legal Association business without charge provided that Association makes its requests a reasonable period of time prior to such usage.

B. Bulletin Boards

Bulletin boards in the teachers' lounges, the inter-school mail and equipment shall be made available for reasonable use by the Association.

C. Property Damage

The Association agrees to reimburse the Board for any damage or loss of school property entrusted to its use or care.

D. Information

The Board agrees to furnish to the Association, in response to reasonable requests, information concerning the financial resources of the District and tentative budgetary requirements and allocations in the form such information is maintained by the Board.

# APPENDIX V

# SAMPLE AWARDS AND REPORTS

## SAMPLE AWARDS AND REPORTS

Contained in this Appendix are three different types of reports. A fictional model fact finder's Report discusses the issues of transfer, decision making, grievance procedure, salaries and policies.

An actual arbitration award from Pennsylvania illustrates a grievance over procedural time limits and benefits while on leave of absence. Arbitration of disputes arising from the contract is required by statute.

The final award discusses whether a school board can unilaterally adopt a no smoking policy for employees. This is also a Pennsylvania case and was determined by the Pennsylvania Labor Relations Board.

## FACT FINDING REPORT

In The Matter of Fact Finding

between

CALUMET SCHOOL DISTRICT #639

and

CALUMET FACULTY ASSOCIATION

### ISSUES

Decision Making, Transfers,
Grievance Procedures, Policies,
Salaries

### FACT FINDING PANEL

George R. Barns, Association Appointed Fact Finder, Sidney O. Jenner, District Appointed Fact Finder, George R. Smith Panel Chairman and Impartial Fact Finder

### HEARINGS HELD

January 18, 19, 21, 1980
Administrative Conference Room 3B
936 Oak Street
Calumet, New Province

### APPEARANCES

For The District: - Wolfgang Wroblewski, H.S. Principal
Raymond Roberts - Dir. Adult Ed.
Wm. Birdson - Asst. Supt. Ed Services
Otis Carrigan - Asst. Supt. Bus. Serv.

For The Association: Dorothy Smith CFA President
Geoffery Armstrong CFA V. Pres.
Sue Merkel CFA V. Pres.

# FACT-FINDING REPORT: A Fictional Model

By Edward C. Buchner and Lewis T. Kohler

## BACKGROUND

This Fact-Finding proceeding arose out of an impasse in negotiations between the Calumet Education Association (CEA) and the Calumet School District #639, and was conducted persuant to the pertinent provisions of Section 14-7 of the School Code.

After twenty-one meetings, during which little progress was made, and after limited job action in May, the Association declared impasse on June 19, 1979. In accordance with Board Policy 1.366, both parties appointed their representatives on a Board of Review (Fact-Finding Panel) and the two representatives selected George R. Smith to serve as Impartial Fact Finder and Chairman. Hearings were held before the panel on January 18, 19, 21, 1980, during which both parties were given ample opportunity to present evidence and argument on the issues.

## FINDINGS AND CONCLUSIONS

The Impartial Fact Finder wishes to express his appreciation for the excellent way in which both parties made their presentations, presented evidence and answered questions at the hearings. The Fact Finder also wishes to commend the parties for agreements reached on many issues which had been in dispute but which were settled before presentation to the Fact Finder. Listed below are issues which were still in dispute and the Impartial Fact Finders' recommendation for their resolution.

### I. DECISION-MAKING AREAS

#### General Comment:

Both the District and the Association have expressed a strong desire for "teacher involvement" in the decision-making process at the various schools and within the District as a whole. The District feels it is actively seeking staff input while the Association feels that "teacher involvement" is frequently carried out on a selective basis not generally representative of the staff and that some teacher suggestions and recommendations are ignored for no apparent reason.

Recommendations:

1) The School Principal shall continue to have the final decision-making authority in all those areas properly coming under the scope of his authority and the District Superintendent of Schools shall continue to have the final decision-making authority in all those areas properly coming under the scope of his authority.

2) The teaching staff of each school shall select through secret ballot election a school faculty council of not less than three or more than five teachers who have expressed a willingness to serve and who are representative of the primary, intermediate and upper grade cores. The faculty senate at each school shall elect one of its members to serve on a District faculty committee.

3) Each Faculty Senate and School Principal or designated representative and the District faculty committee and District Superintendent of Schools of designated representative shall meet from time to time by mutual agreement to exchange information, opinions, proposals, counter proposals and to make and consider recommendations in a conscientious effort to reach agreement. Such proposals, recommendations and/or agreements shall be put in writing if requested by either party.

4) The scope of topics that may be considered at School Faculty-Principal meetings shall include only such matters which are of mutual concern and which are within the scope of the Principal's authority. Examples could be the school budget, education plan, student placement, combination classes, parent communications, parent conferences, instruction and curriculum faculty meetings, best use of Modified Day, student records, youth activities, intramurals, new programs, hiring of educators, use of specialists in the classroom recommendations for improvement of instructional programs and techniques, grade level assignments, pilot programs, study projects and lesson planning.

5) The scope of topics that may be considered at District Faculty-Superintendent of School Meetings shall include only such matters which are of mutual concern and which are within the scope of the Superintendent's authority. Examples could be district educational programs, educational policies and instruction programs.

6) It shall be understood that the function of these committee meetings is in no way to bypass, alter or to interfere with the rights and obligations of the parties under any existing legislation and is only designed to provide a fair and equitable manner for the teaching staff and management to better understand each other's point of view and to improve the educational program in the District.

## II. ORGANIZATIONAL RIGHTS

### General Comment

Both parties recognize the rights of employees to join or not to join employee organizations. The Association believes the District should do certain things to make it possible for the employee organization to function more efficiently while the District believes it would be improper to support the employee organizations.

### Recommendations

1) Release Time and Conferences: The District shall provide a reasonable amount of release time for organizational business, conference attendance and grievance processing where it can be demonstrated these activities cannot be accomplished outside of the educational day.

2) Time and Place: The Board of Education's representative and the CEA shall meet at approximately 3:15 P.M., alternating the location between the Calumet School District #639 office and the CEA office or at such other mutually agreeable time and place.

3) Communications: Employee organizations shall be entitled to use the official bulletin boards and other means of communication available to employees without cost to the District subject to the following conditions:

A) If the school or building has designated one or more bulletin boards, communications to employees shall be posted only on designated bulletin boards.

B) Any communication posted on a district bulletin board, or sent through school means for distribution, or placed in employee boxes, shall give the name of the organization sending the communication and the name of a responsible officer of such organization.

C) Time may be allowed at the end of faculty meetings for organization business provided that, in the judgment of the school principal, the additional meeting does not interfere with the regular work day. Staff members who do not wish to participate shall be given ample opportunity to leave.

D) School facilities may be used for meetings if there is no conflict with other official school use and upon proper notification and approval. In addition, the organization may file for a permit to reserve facilities in advance.

E) Representatives of organizations shall not contact employees regarding organizational business during the time they are performing their regular, professional duties.

F) Materials that advance, promote, advocate or direct the business of the employee organization shall not be sent home with students.

## III. TRANSFERS

### General Comment

Both parties recognize the necessity for Voluntary and Involuntary transfers. The Association is particularly concerned that Involuntary transfers be avoided as much as possible, that teachers who are denied the opportunity to transfer receive appropriate reasons and that length of service be a factor in transfer decisions. The District is particularly concerned that teachers be located where they can best contribute to overall educational efficiency.

### Recommendations:

1) All personnel are employees of the school district and not of a particular school. The Superintendent of Schools has the prerogative of placing certificated personnel according to the needs of the school district, interests of children and the individual teacher. However, provisions shall be established to provide for the transfer of individual teaching assignments.

The following types of transfers are possible:

A) VOLUNTARY -- Teacher Initiated. Where the teacher requests transfer for reasons of personal convenience or professional improvement.

B) INVOLUNTARY -- Administrator Initiated. Where transfer is initiated by an administrator because of a credential problem, returning from leaves, filling existing vacancies, opening or closing of schools, a surplus of certificated personnel exists, enrollment or other reasons designed to strengthen school programs and to improve efficiency.

2) Procedures to be followed in the case of a voluntary transfer:

This procedure is based on the professional concept that all of the people who will be affected by the transfer should be informed.

A) The teacher may discuss his interest for a transfer with his/her present principal.

B) A teacher may request transfer to another school by submitting a written request to the Personnel Office. The Personnel Office shall be responsible for maintaining the utmost confidentiality between the parties involved.

C) The Personnel Office shall notify all individuals requesting transfer of known available openings by phone or in writing as soon as they occur.

D) A teacher may withdraw an application for transfer within five (5) working days without affecting any future transfer request.

E) The names of those individuals requesting a transfer shall be prepared and sent to the school of their request, regardless of known openings.

F) The principal of the school shall establish an interview time with individuals requesting a transfer when a vacancy becomes available.

G) The interviewing principal shall notify the Personnel Office as to his recommendation regarding the transfer.

H) In making a recommendation to fill the vacancy, the principal may consider the following factors: teacher-preparation, interests and strengths, ratings, evaluations, special instructional strengths and experiences, ethnic distribution, age balance, ratio of men and women, specialty areas and, where other factors are equal, length of service to the school district.

I) Qualified volunteers within the District shall be given first consideration in filling openings before hiring from outside the District.

J) The Personnel Office shall notify those individuals of the decision regarding the transfer request based upon the principal's recommendation.

K) If a request for a transfer is denied, the certificated employee shall receive written notification of the denial. Upon request, the employee shall be granted a meeting with the administration to discuss the reasons for denial which shall be given in writing.

L) When a certificated employee is transferred during the school year, he/she shall be given either fifteen (15) days written notice of such transfer or shall be granted one (1) working day of release time in order to prepare for the new assignment. Such certificated employee may request and shall be given custodial and/or maintenance help in moving instructional materials from his current place of assignment to the new assignment.

M) The above policy shall be monitored through the Personnel Office.

3. Procedures to be followed in the case of involuntary transfer of a teacher:

A) Involuntary transfers shall be limited as much as possible if there are qualified volunteers available to fill the position. Reasons for involuntary transfer may include need for balancing staff, enrollment, leave returnees, schools opening or closing or other reasons designed to strengthen school programs.

B) After talking with the teacher involved about the possible transfer, the administrator shall consult with the Personnel Office regarding a desire to transfer a certificated employee, taking into account those items that should be in the best interest of the employee and/or the District.

C) If agreement is reached that a transfer appears to be desirable in light of all available information, the administrator shall insure that the certificated employee involved will be the first to know of the decision and shall send the employee written notification and rationale for the transfer.

D) The Personnel Office will meet with the certificated employee to consider:

1) Rationale for the involuntary transfer;
2) The acceptance of the decision to be transferred; and
3) The exploration of new placement.

The teacher will be informed, in writing, of the new assignment with a copy sent to the Principals involved.

E) The current list of vacancies within the schools shall be provided a transferee upon request and every reasonable effort shall be made to grant the teacher an open position of his choice considering his qualifications.

F) When a teacher is transferred during the school year he shall be given either fifteen (15) days written notice of such transfer or one (1) working day of release time to prepare for the new assignment. Such teacher may request and shall be given custodial and/or maintenance help in moving instructional materials from his/her current place of assignment to the new assignment.

G) Teachers who have transferred at the request of the administration within the past twelve (12) months shall not be subject to another involuntary transfer until they have completed the school year at the site to which they were transferred.

## IV. GRIEVANCE POLICY

### General Comment

The parties are in agreement that a Grievance Policy should exist but have widely differing views as to what such a policy should contain. The Impartial Fact Finder strongly concurs in the need for such a policy and quotes the following from the late Professor Lewis W. Hill:

> "A grievance procedure is to the human factor what maintenance is to the machine factor. It provides the lubricant to ease friction, the advance inspection and care to avoid breakdowns and the repair when repair becomes necessary. It facilitates the fair ascertainment of rights and duties as between supervisor and subordinate. It functions primarily to make the necessary adjustments which must be made if efficient operations are to be maintained."

Recommendations:

1) Grievance - an alleged violation of a District rule, regulation, policy, procedure, practice or portion of the P/N Agreement having to do with employer-employee relations.

2) Protective Intent - the filing of a grievance by any teacher shall not reflect unfavorably upon the teacher or upon the supervisor with whom it may be filed.

3) Conferee - a fellow teacher, supervisor, administrator, or organization representative selected by the Grievant to assist him in presenting and processing his grievance.

4) Day or Days - when the Administrative Center of Calumet School District is open for business except Fall (Christmas) and Spring (Easter) vacation periods.

5) Association - Calumet Faculty Association or other employee organization.

6) Teacher - any certificated employee except those designated as in management positions pursuant to P/N Agreement.

7) Supervisor - the person having immediate jurisdiction over the person who is filing the grievance and who has been designated to administer grievances.

8) Time Limits - A grievance must be filed within fifteen (15) days of occurrence or discovery. No longer than ten (10) days will be taken to reply at any level or more than ten (10) days to appeal the grievance to the next level if not settled satisfactorily. Time limits may be extended by mutual agreement.

9) First Level - Teacher presents his grievance orally to his immediate supervisor. Teacher may bring a Conferee to this meeting but the Conferee shall take no part in any discussion or resolution of the grievance. If not resolved, teacher puts his grievance in writing, stating clearly its basis and the relief sought. The teacher may secure assistance from a Conferee in writing his grievance.

10) Second Level - The written grievance may be resubmitted by the Grievant

to the teacher's immediate supervisor or to the next level of supervision at the option of the supervisor. The Grievant may be represented and assisted by a Conferee at this step and at any subsequent steps.

11) Third Level - If not resolved, the grievance may be submitted to the District Superintendent or designated representatives.

12) Fourth Level - If not resolved, the grievance may be submitted to an Advisory Arbitrator mutually selected by the parties through the American Arbitration Association who will conduct a hearing and render an advisory award, not binding on either party in accordance with American Arbitration Association rules. Fees and expenses of the Arbitrator will be shared equally and the Arbitrator shall have no power to add to, subtract from or modify the written policies, rules, regulations, practices or procedures of the District or the P/N Agreement. Question of arbitrability shall be determined by the Advisory Arbitrator.

13) Fifth Level - Either the Association or the District may appeal the decision of the Advisory Arbitrator to the Board of Trustees and if not so appealed and if not changed or modified by the Board, the decision will be put into effect.

14) Miscellaneous - Both parties will cooperate in providing each other with necessary information to understand and process grievances. Grievance processing will normally be done outside of the normal instructional day except by mutual agreement. A suitable grievance form will be developed by the parties. The Grievant and his/her Conferee will be provided release time without loss of pay or benefits for presentation of a grievance in arbitration. The Grievance and Arbitration process shall be considered private between the parties unless mutually agreed to the contrary. The District shall advise the Association of the settlement reached concerning any grievance in which the Association is not a Conferee. Nothing in this procedure is meant in any way to change or modify the final authority of the Board of Trustees to decide issues brought before them.

## V. MANAGEMENT RIGHT AND GOVERNING BOARD POWERS

### General Comment

For every right there must be a responsibility. The responsibility of management is to exercise its rights fairly and reasonably in dealing with its employees and never to take any action with regard to any employee which could be considered arbitrary, capricious or discriminatory.

### Recommendation:

Except as modified or controlled by existing District policies, rules, practices or procedure, it is understood that the Board of Trustees retains all of its powers and authority to direct and control the District to the full extent of the law. Included in those duties and powers are the following rights: to direct the work of its employees; to determine the method, means and services to be provided; to determine the staffing patterns; to determine the number and kinds of personnel required; to maintain the efficiency of District operations; to determine curriculum; to build, move or modify facilities; to develop and administer a budget; to determine the methods of raising revenue; to conduct short and long-range planning and creation of committee attached thereto; to contract out for work; to evaluate, hire, promote, terminate, assign and discipline employees for just cause; and to take action on any matter which the Board deems an emergency.

## VI. NOON AIDES

### General Comment

The District has taken the position that this is just another special benefit for teachers and any money available to provide this benefit would be better spent on salaries. The Association points out that the use of Noon Aides does provide some additional time for teachers to cope with their heavy workload, that it is much less costly to use Noon Aides to supervise students than to employ teachers to do that supervision and that the Noon Aide program can be financed from the Village Service restricted tax as has been done in the past.

### Recommendation:

The Noon Aides shall be continued and the cost shall be financed as much as possible from the Village Service restricted tax as has been done in the past.

## VII. INSURANCE BENEFITS

### General Comment

The Association points out that the District provides lower employee benefits than most other Districts in the area and less than the State average. The District points out the existing insurance program will cost some $30,000 more in the next year and in view of the tight budget, any available funds should be allocated to pay this increase and not to provide additional benefits.

### Recommendation:

Present benefits shall be maintained.

## VIII. SALARIES

### General Comment

Both parties are in agreement that salaries should be increased if funds are available. As of the time of the hearings in January, the District felt it could only offer step and column which has been estimated to cost approximately 3.4% and from which some 80 teachers would receive no benefit.

There is no question that the Calumet School District #639 faces a certain number of financial problems including the recent defeat of a tax override by a very small margin and, as a result, has had to make serious budget cutbacks. It is also quite true the cost of living has increased some 13.8% in the last year and teachers are entitled to as much relief as possible under the circumstances.

The records presented to this Fact-Finder would indicate Calumet School Teachers are generally paid less in salary and fringe benefits than are paid to teachers in surrounding Districts and less than the average teachers salary in the State. Pupil/Teacher ratios are difficult to compare with regard to Calumet School District and other Districts because of the question of how to count Instructional Coordinators. Association figures show Calumet School to have the highest Pupil/Teacher District ratio as somewhere in the middle as compared to other Districts in Baker County. While many Districts in Baker County have not yet reached agreement on new salaries for 1979-80, those who have will be paying some 6% or more in increases, excluding step and column increases before the passage of Senate Bill 113.

The District's 1979-80 Budget does indicate it will be possible to recommend some increase in salary for the teachers. First of all, the District has chosen to increase its Reserve by some $435,000. While building reserves is certainly desirable, it is not fair to do so at the expense of the teachers and the District has shown no compelling reason to do so. In fact, it would seem reasonable for Reserves to decline slightly in relationship to total budget in an effort to provide a salary increase for teachers at this time. Secondly, the District has budgeted the expenditure of some $174,000 of general funds for capital outlays which can easily be replaced by using other funds restricted as to use for capital outlay only. Funds from sale of sites are available for this use and the argument that these are one-time funds is also not compelling both because of the need to increase salaries and because of the continuing availability of such capital funds for some years to come. Thirdly, the District has budgeted the continuation of two programs formerly funded by the Federal Government which will now cost the District some $83,000. This is not to indicate these programs are without merit and perhaps even highly desirable to be offered in the District, but only to raise the question that if the programs were not sufficiently important to fund with District money before the Federal Government stepped in, are they now more important than a reasonable increase for teachers? Fourthly, the legislature passed and the Governor signed Senate Bill 113 which could have provided the District with some $304,000 of additional funds. The Fact Finder has been informed that the Board of Trustees declined to pass a small tax increase allowed by Senate Bill 113 and, therefore, the District will receive only some $242,000 of the potential $304,000. While the Board certainly had the right to make this decision and while the Fact Finder can certainly appreciate the reluctance of the Board to approve even a small tax increase after a tax override so recently was defeated and with a vote on unification pending, it still means the Board had an opportunity to raise some $62,000 which could have been made available to halp a tight budget, and declined to do so.

The total of all these funds, excluding the $62,000, is some $934,000. The Fact Finder recognizes it may not be practical to change commitments made to continue the two previously federally funded programs which will now cost the District some $83,000; but the Fact Finder does urge the Board to reconsider the importance of these programs as compared to the payment of adequate salaries. This leaves some $851,000 which can reasonably be considered as available for salary increases, considering the need for such increases in view of double digit inflation and the fact that other budget decisions have already been made.

The District had indicated a 1% increase in salaries and related benefits for all employees would cost some $104,000. It is the Fact Finder's belief this figure does not include any reduction for turnover among other factors and that the actual cost will be somewhat less, perhaps closer to $100,000.

The Fact Finder believes on the basis of the record made by the parties that the teachers are entitled to receive as much of their requested salary increase as is possible within the financial constraints of the District. Major factors in this decision include the 11% increase in cost of living, the lower level of salaries and fringe benefits compared to other Districts, the higher pupil/teacher ratio and the indication of greater teacher workload.

Recommendation:

Teachers shall be granted a general increase of 8.5%.

(signed)

George R. Smith
Impartial Fact Finder

# AN ACTUAL ARBITRATION AWARD

CENTRAL REGION - BLAIR COUNTY - HOLLIDAYSBURG - NO. 001-07

ARBITRATOR - CLAIR V. DUFF

| | | |
|---|---|---|
| IN THE MATTER OF THE ARBITRATION BETWEEN<br><br>BOARD OF SCHOOL DIRECTORS OF<br>HOLLIDAYSBURG AREA<br>HOLLIDAYSBURG, PENNSYLVANIA<br><br>AND<br><br>HOLLIDAYSBURG AREA EDUCATIONAL ASSOCIATION | ) | ARBITRATION AWARDS<br><br>CLAIR V. DUFF<br>ARBITRATOR |

ISSUE NO. 1 - PROCEDURAL TIME LIMITS

ISSUE NO. 2 - BENEFITS WHILE ON LEAVE OF ABSENCE

HEARING HELD AT HOLLIDAYSBURG, PENNSYLVANIA

APRIL 17, 1972

## APPEARANCES

| FOR THE BOARD: | FOR THE ASSOCIATION: |
|---|---|
| Marion D. Patterson, Jr., Esq.<br>Patterson, Evey, Routch & Black<br>Solicitor | John R. Strawmire, Esq.<br>Counsel for Grievants<br><br>Frank Rosenhoover<br>PSEA Field Representative |

## OPINION

The undersigned was selected as sole Arbitrator by the parties, from a panel furnished by the Bureau of Mediation of the Commonwealth of Pennsylvania, to hear and decide certain unresolved grievances existing between the BOARD OF SCHOOL DIRECTORS OF HOLLIDAYSBURG AREA, Hollidaysburg, Pennsylvania (Board) and HOLLIDAYSBURG AREA EDUCATIONAL ASSOCIATION (Assocation).

On April 17, 1972, the Arbitration Hearing was held at the School District Administration Offices, Hollidaysburg, Pennsylvania. Both parties were represented by legal counsel and presented testimony, written evidence and arguments in support of their respective positions. Because these two disputes present separate issues, they must be discussed individually.

### ISSUE NO. 1

Approximately 220 professional employees of the Board are within a bargaining unit represented by the Association under a negotiated Agreement executed September 1, 1971, and made effective July 1, 1971.

Included among the employee benefits set forth in Article VI, was the Board's promise to pay certain costs of a medical insurance plan and a portion of family and dependent coverage in the 1971-1972 school year. A dispute arose concerning the correct interpretation of Section 28 of Article VI in connection with the amount of premium that was to be paid in a situation where both husband and wife were employees of the Board. The dispute was not amicably settled, and the Association filed Grievance No. 6, dated December 21, 1968, protesting that the Board's interpretation of Section 28 was incorrect.

By letter dated December 23, 1971, the grievance was acknowledged by Clarence W. Farley, then Acting Superintendent of the School District, and

January 3, 1972 was established for a meeting to discuss the matter. The position of Superintendent was then vacant and the Board was busily engaged in filling it. By letter dated January 5, 1972, Acting Superintendent Farley requested further information concerning the theory of mathematical calculation proposed by the Association to support the grievance. The information requested was furnished to him the same day. By letter of January 17, 1972, Mr. Farley transmitted to the Association representative the decision of the School Board to refuse the Association's grievance. By its letter of January 21, 1972, the Association informed Acting Superintendent Farley of its position. The applicable portion reads as follows:

> ". . . your failure to issue a decision within the specified time limit as stated in the contract in Article III under the Section dealing with the Processing Part C, paragraph 1, 2, 3, has rendered the grievance settled in favor of the grievants relating to the payroll deduction for Blue Cross/ Blue Shield. . ."

When the parties failed to settle the dispute, the matter was referred to binding Arbitration.

## APPLICABLE CONTRACT PROVISIONS

### Article III - Grievance Procedure

"I. Definition

. . .

C. 'Day' means calendar day, Saturdays, Sundays and state mandated legal holidays excluded as the last day of the time limit.

"II. Procedures

A. Grievance shall be processed promptly and expeditiously.

. . .

I. Failure by a grievant to process a grievance within the specified time limits shall render a grievance as settled in favor of the board.

J. Failure to issue a decision within the specified time limit shall render the grievance settled in favor of the grievant.

K. Class grievances shall be filed at Level II within ten (10) days of the occurrence.

. . .

"PROCESSING

C. Level III - Appeals to the Superintendent

1. Within five (5) days of the decision at Level II, the Grievant may request an appeal to the Superintendent. The appeal shall include all materials previously submitted.

2. The Superintendent shall establish a hearing within ten (10) days following such request, and notify the Grievant at least five (5) days prior to the hearing date.

3. Within five (5) days of the said hearing, the Superintendent shall notify the parties in interest of his decision."

D. Level IV - Arbitration

. . .

6. The arbitrator shall have no power to add to, subtract from or alter the language of the agreement. He shall have no power to make an award inconsistent with law. He shall rule only on the interpretation of the clause of the agreement."

. . .

## CONTENTIONS OF THE PARTIES

The Association contends that the Board has violated the Agreement by failure to comply with the contractual time limits. On the merits, it contends that the method of computing benefits under Article VI, Section 28, is not correct. It requests that the grievance be granted either for the failure of the

Board to observe the required limits, or based on the merits.

The Board contends that although the decision was not issued within the time limits set forth in the Agreement, certain mitigating circumstances exist, which excuse strict compliance. On the merits, it argues that the Board's method of computing family and dependent coverage benefits under the medical insurance plan is correct. It requests that the grievance be denied.

## DISCUSSION

Where contractual time limits are raised as a threshold issue, that procedural question must be decided before giving consideration to the merits of the underlying dispute. This is the first arbitration case between the parties. Arbitration derives its authority to achieve the resolution of the disputes from the mutual agreement of the parties. Article III, Grievance Procedure, clearly states that the Arbitrator "shall have no power to add to, subtract from, or alter the language of the agreement." This mandate is inescapably precise.

Article III, C, Level III, states that when an appeal is made to the Superintendent he shall establish a hearing within ten days following such request and within five days of said hearing, "the Superintendent shall notify the parties in interest of his decision." This is not merely advisory, because under II, Procedures, I, the Failure by a Grievant to process a grievance within the specified time limit renders the grievance settled in favor of the Board. Under Paragraph J, the failure of the Board " to issue a decision within the specified time limit shall render the grievance settled in favor of the Grievant."

It is eminently clear that the parties contemplated that all definite procedural time limits set forth in the Agreement would be enforced unless specifically waived in special circumstances. The Agreement does not suggest that the parties intended to confer upon the Arbitrator any power to grant exception where no extension of time limits had been requested by the parties. This is different from a situation where there is an established practice whereby the parties ignore contractual time limits. In such cases, an Arbitrator is obligated to abide by the practice of the parties, and to adopt their flexible view of procedure. Clearly, no such practice exists here, because this is the first time the question ever has been raised.

It is true that the Acting Superintendent encountered a difficult situation because the written grievance was received at about the time when the Christmas school recess started. In addition, the *Board* was then busily engaged in the search for a superintendent, and perhaps the *Board* members did not want to be troubled by matters of lesser import. Still, the *Board* failed to comply with the contractual time limits. *Article III* defines the word "day" to mean a calendar day, and thus time set forth in the Agreement refers to calendar days.

Where the parties carefully have set forth, in clear and unambiguous language, contract time limits, and have provided an explicit penalty attendant upon the *Board's* failure to issue a decision within the specified period, we have no alternative but to enforce the bargain of the parties. The Agreement precludes any consideration of the dispute on the merits, and this class grievance must be deemed settled in favor of the Grievants.

## AWARD

Grievance No. 6, dated December 21, 1971, is granted.

/s/

Clair V. Duff
Arbitrator

May 3, 1972

Pittsburg, Pa.

## ISSUE NO. 2

Early in 1972, Richard C. Wylie, a professional employee, requested and was granted a one-year leave of absence ending March 1973, for the purpose of pursuing advanced study at an out-of-state university to obtain a Master's degree in Safety Education, his teaching field. A dispute developed between Wylie and the Board concerning entitlement to certain contractual benefits while on the authorized leave.

On February 24, 1972, Wylie filed Grievance No. 9, requesting payment of his Blue Cross hospitalization premium, and reimbursement for the tuition cost of his graduate credits. The Board refused the request. When the parties were unable to amicably settle the dispute during initial steps of the grievance procedure, they resorted to arbitration.

## APPLICABLE PROVISIONS OF AGREEMENT

### Article VI - Benefits

"1. Upon receipt of a written request, made prior to April 1 of a contract year, the Board will grant an employee a leave of absence, without salary or salary advancement and without abatement of accrued benefits, for the following purposes:

. . .

b. Advanced study in a college or university in a program related to his assigned tasks.

. . .

"28. The Board agrees to pay the full cost of the coverage for the employee in the present medical insurance plan . . .

"29. During the term of this agreement, the Board shall reimburse each employee thirty-five (35) dollars per graduate credit successfully completed in his field leading to a graduate degree to a limit of twelve (12) graduate credits per year, and fifteen (15) dollars per year per graduate credit successfully completed out of his field leading to a limit of twelve (12) graduate credits per year."

## CONTENTIONS OF THE PARTIES

The Association contends that a professional employee, granted a leave of absence by the Board for the purpose of advanced study, is entitled to continue to receive medical insurance coverage, and reimbursement for graduate school tuition while on leave. It argues that these are "accrued benefits" under Article VI.

The Board contends that the Agreement provides the benefits in dispute only to professional employees who are actively engated in performing duties for the Board. It argues that when a teacher is on leave of absence, he only is entitled to retain the accrued benefits which he already possesses, such as sick leave. It requests that the grievance be denied.

## DISCUSSION

One of the fundamental purposes of any Collective Bargaining Agreement is to set forth the duties and responsibilities of employees, and to establish the salaries and fringe benefits that employees will receive for performing work duties. The underlying bargain is the promise to work for the compensation agreed upon. It is clearly implied that if an employee does not render services, no compensation will be paid. Most fringe benefits are integral parts of the total compensation earned, and are not mere gratuities.

In analyzing this dispute, we must be mindful of the relationship of the parties, as well as the contractual language selected. Article VI specified that upon written request, the Board will grant an employee a leave of absence for certain specified purposes, including to pursue advance study. It further provides that leave will be granted "without salary or salary advancement and without abatement of accrued benefits." The Association contends that the words "accrued benefits" includes medical insurance benefits. We find no support in the Contract for this assertion. Both hospitalization insurance benefits and life insurance premium payments are fringe benefits that are part of the total wage package. Whether an employee receives all of his salary in cash or in fringe benefits is of no significance, because these benefits are earned by an employee while working. Unless the Agreement clearly states a contrary rule, an employee on leave of absence has no claim to such benefits under the theory of accrued benefits.

The dispute concerning reimbursement for graduate school tuition presents a different problem. Article VI, Section 29, states that "during the term of this agreement the Board shall reimburse each degree employee certain payments for graduate school credit he successfully completes. The manifest intent of this provision is to create an incentive for an employee to cultivate his proficiency, presumably to increase the professional competence of teachers in this School District. It is true that all teachers who take advantage of this opportunity to enhance their academic credentials ultimately may use thier talents at another School District. There is no guarantee that anyone who takes either part-time or full-time graduate work will be retained indefinitely in the employment of the District, yet this is so, because the District failed to make the benefit conditional.

Nothing in the Contract suggests that any distinction shall be made between an employee who is a part-time student, for a graduate degree, and one who becomes a full-time student. If the intent of the Board is to stimulate advance study by its employees, this objective is obtained in a more expeditious manner by having an employee take a leave of absence to engage full time in graduate study. Article VI, I, b, specifically lists advanced study in a program related to his assigned tasks as one of the specific reasons for granting a leave of absence. A professional employee on such leave has not completely severed the employer-employee relationship. Although tuition reimbursement is not an accrued benefit, it is a contractual benefit guaranteed by Article VI, Section 29, to all employees. An employee who has not resigned from the School District, but is on a leave of absence, presumably intending to return to this School District, is entitled to receive the reimbursement for graduate tuition in accordance with Section 29.

## AWARD

Grievance No. 9, dated February 24, 1972, of Richard C. Wylie, is granted only to the limited extent that he is entitled to be reimbursed for tuition paid for graduate school credits in accordance with Article VI, Section 29. His claim for payment of hospital insurance benefits is denied.

/s/

Clair V. Duff
Arbitrator

May 3, 1972

Pittsburg, Pa.

# AN ACTUAL LABOR RELATIONS BOARD DECISION

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA LABOR RELATIONS BOARD :
:
vs. : Case No. PERA-C-9224-C
:
WAYNESBORO AREA SCHOOL DISTRICT [1] :

# FINAL ORDER

The Pennsylvania Labor Relations Board (Board) on March 3, 1978 issued a Nisi Decision and Order wherein it held that the Waynesboro Area School District (School District) did not commit unfair practices within the meaning of Section 1201, subsection (a), clauses (1),(5) and (9) of the Public Employee Relations Act (PERA or Act) by unilaterally implementing a no smoking policy during the term of the collective bargaining agreement between the School District and the Waynesboro Education Association (Association). The Board found that as a result of the contractual provision contained in Section 18.00 of the collective bargaining agreement, and entitled "Demands, Proposals and Waivers", that the School District had indirectly negotiated the matter of employee smoking on the premises of the School District and that in so doing they had satisfied their statutory bargaining obligation.

On March 13, 1978, timely Exceptions were filed by the Association wherein it set forth as the sole reason for taking exception the following "the Pennsylvania Labor Relations Board was incorrect in concluding that Complainant waived its right to bargain during the term of the operable collective agreement." The Board thereafter on March 31, 1978, issued an Order Directing and Fixing Time and Place of Argument on Exceptions setting forth May 17, 1978, in Harrisburg, Pennsylvania, as the time and place of argument and afforded the parties the opportunity to file briefs preceding argument.

Public employers are required pursuant to Section 701 of PERA to bargain in good faith with public employee representatives with respect to wages, hours and other terms and conditions of employment. As a general rule a public employer commits an unfair practice in violation of Section 1201 (a) (5) by unilaterally implementing a mandatory subject of bargaining. City of Erie School District, Case No. PERA-C-9713-W, 9 PPER Para. 9031 (1978); Greensburg Salem School District, Case No. PERA-C-7157-W, 7 PPER 99 (1976); Appeal of

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[1] Caption appears as amended by the Board

Cumberland Valley School District, __Pa.__, 394 A.2d 946 (1978). The Board has held that employee smoking on premises is a mandatory subject of bargaining. Chambersburg Area School District, Case No. PERA-C-9101-C, 9 PPER Para. 9090 (1978). Thus prior to any change over smoking there is an obligation on the part of the public employer to bargain in good faith.

The Board has found that the School District herein has satisfied its bargaining obligation, albeit indirectly, by virture of the inclusion of a "waiver" or "zipper" clause contained in Section 18.00 of the parties contract and providing:

> "The Employer and the Association acknowledge that during the negotiations which resolved in this Collective Bargaining Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understanding and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Collective Bargaining Agreement. Therefore, the Employer and the Association, for the life of this Collective Bargaining Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter not specifically referred to or covered in this Collective Bargaining Agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both of the parties at the time that they negotiated or executed this agreement.
>
> "Upon prior mutual written agreement the parties may, but shall not be obligated to, negotiate or renegotiate any subject or matter. Any agreement reached in such manner shall be reduced to writing, signed by the parties and treated as an addendum to this Collective Bargaining Agreement."

This is consistent with previous decisions of the Board wherein it has been held that parties may indirectly bargain over mandatory subjects of bargaining by including within their contract a waiver clause which clearly and unmistakably waives the right to bargain during the existence of the contract. Keystone School District, Case No. PERA-C-10,434-W, 9 PPER Para. 9058 (1978); Bucks County Area Vo-Tech School, Case No. PERA-C-5771-E, 6 PPER 230 (1975); Chambersburg, supra. The Association claims that not only has the Board reached a decision contrary to well-established waiver principles but also the Board's decision is inconsistent with the primary goal of stable labor relations.

The NLRB and the Circuit Courts are not in agreement concerning the effect to be given to waiver clauses. In Radioear Corp. I, 199 NLRB No. 13781 LRRM 1402 (1972), the NLRB was required to determine whether an employer violated the Labor Management Relations Act, Act of June 23, 1947, c, 120, §1, 61 Stat. 136, 29 U.S.C., §141 et seq., by unilaterally terminating holiday bonus money. The Employer therin defended its action on a broad catchall waiver provision which it argued excused it from what would otherwise be a bargaining obligation. The majority of the NLRB found that the waiver provision must first be interpreted by an arbitrator and in reliance on the Collery Doctrine 2/ deferred the case to arbitration. The NLRB opined that the answer to this question (whether the employee's bargaining obligation was relieved by a waiver clause) did not lend itself to a rigid rule, but rather that some of the following factors should be considered:

> "(a) the precise wording of and emphasis placed upon any zipper clause agreed upon;
>
> (b) other proposals accepted or rejected during bargaining;
>
> (c) the completness of the bargaining agreement as an 'integration' - hence the applicability or inapplicability of the parol evidence rule; and
>
> (d) practices by the same parties, or other parties, under other collective bargaining agreements."
> 81 LRRM at 1403.

After the arbitrator had failed to answer the question put forward to him by the NLRB, the case was once again returned to the NLRB to determine whether the LMRA had been violated by the employer's refusal to bargain. In Radioear Corporation II 214 NLRB No. 33, 87 LRRM 1330 (1974) the NLRB in a split decision found no unfair practice after applying the standards set forth in their earlier decision. The Board found:

> "In light of these circumstances, we find that there has been a conscious, knowing waiver of any bargaining obligation as to nonspecific benefits such as 'turkey money' bonus. Nor do we find any repugnancy to the Act's principles in giving effect to such a waiver under these circumstances."
> 87 LRRM at 1332.

The two dissenting members of the Board would find that broad catchall waiver provisions do not serve to relieve a party from its bargaining obligation and that the statutory purposes of the LMRA are undercut by giving effect to these provisions. The position of the dissenters is consistent with the policy previously announced by the NLRB, wherein it had held that a waiver to be effective must refer specifically to that condition of employment over which the employer refuses to bargain. Tide Water Associated Oil Co., 85 NLRB No. 189, 24 LRRM 1518 (1949); Leroy Machine Co., 147 NLRB No. 140, 56 LRRM 1369 (1964). Were we to apply this rationale, the waiver provision for it to be effective would have had to specifically refer to the subject of employee smoking.

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2/ Collyer Insulated Wire, 192 NLRB No. 152, 77 LRRM 1931 (1971)

The Circuit Courts in enforcement actions brought to enforce the cease and desist orders of the NLRB has treated waiver provisions in a manner consistent with the postion previously taken by this Board. The Circuit Courts have found that the presence of clear and unistakable language within a catchall waiver provision can serve to relieve employers of their bargaining obligation. NLRB V. Auto Crane Company, 92 LRRM 2363, 536 F.2d 310 (Tenth Circuit, 1976); NLRB v. Southern Materials, 77 LRRM 2814, 447 F.2d 15 (Fourth Circuit, 1971); General Electric Company v. NLRB, 71 LRRM 2562, 414 F.2d 918 (Fourth Circuit, 1969); Timken Roller Bearing Company, 54 LRRM 2785, 325 R.2d 746 (Sixth Circuit, 1963). In Auto Crane, supra, the Tenth Circuit stated:

> "Since the Board's finding of an unfair labor practice is based solely on the refusal of the Company to bargain and the Union has waived the right to bargain, the order cannot be enforced. The Union by the clear waiver of the right to bargain has traded that remedy for other contractual or legal remedies as it may do. The choice was made and the Union is bound by it."
> 92 LRRM 2364-2365.

While in General Electric and in Timken the breadth of the contractual language was insufficient to relieve the employer of its bargaining obligation, the Courts did agree that a Union was free to relinquish its rights under the provisions of a collective bargaining agreement, if it elects to do so by clear and unmistakable language. The waiver clause in the instant case is very similar to those found in Southern Materials 3/ and Auto Crane 4/ which were

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3/ The zipper clause in Southern Materials provided:

> "The Company and the Union, for the life of this agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject matter referred to or covered in this Agreement, or with respect to any subject matter not specifically referred to or covered in this Agreement."

4/ The waiver in Auto Crane provided:

> "This Agreement is subject to amendment, alteration, or addition only by a subsequent written agreement between and executed by the Company and the Union. The waiver of any breach, term, or condition of this Agreement by either party shall not constitute a precedent in the future enforcement of all these terms and conditions. The parties acknowledged that during the negotiations that resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this agreement. Therefore, the Company and the Union, for the life of this Agreement, each voluntarily and unqualifiedly waive the right and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or

found by the respective Circuit Courts to be sufficiently clear and unmistakable so as to evidence a relinquishment of the right to bargain by the Union.

It is important to realize that the Board in examining the contractual language herein is not usurping a function which would normally be reserved to an arbitrator. Our inquiry is not done for the purpose of arriving at an interpretation of a contractual provision, the waiver, but rather is an attempt to determine whether what would otherwise be a statutory violation of Section 1201 (a) (5) is not such a violation because of "indirect" bargaining. The Board may examine contractual language for the purpose of determining whether statutory rights have been violated. *NRLB v. C.C. Plywood Company*, 384 U.S. 963, 64 LRRM 2065 (1967). In that case, an employer had been found by the NLRB of violating Section 8(a) (5) of the LMRA after his refusal to bargain over a premium pay plan. The Court of Appeals for the Ninth Circuit refused to enforce the NLRB's cease and desist order finding that the contract *arguably* allowed the employer to institute unilateral action. The Supreme Court found that the NLRB had jurisdiction to determine the extent of the contract rights of the union in the context of determining whether statutory rights had been abridged. The Court so stated:

> "It (the NLRB) has not imposed its own view of what the terms and conditions of a labor agreement should be. The Board's interpretation went only so far as was necessary to determine that the union did not agree to give up these statutory safeguards. . . . Thus the Board, in necessarily construing a labor agreement to decide this unfair labor practice case, has not exceeded the jurisdiction laid out for it by Congress."
> 67 LRRM at 2068.

This was also the extent of this Board's inquiry; not to interpret the waiver clause but merely to see whether it relieved the School District from its obligation to bargain.

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> *matter referred to, or covered in this Agreement, or with respect to any matter or subject not specifically referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge or contemplation of either or both parties at the time they negotiated or signed this Agreement*." (Emphasis in original)

In examining the waiver clause contained in Section 18.00 of the contract herein, we reaffirm our earlier holding that the School District did not violate the provisions of PERA. The waiver clause clearly and unmistakably shows that the parties have bargained in good faith over all subjects of bargaining whether or not they be specifically referred to in the contract, or whether or not they were within the knowledge or contemplation of the parties during negotiation and execution of the contract. We cannot discount the significance of this waiver provision with regard to the unfair practice which is alleged. See County of Allegheny v. Allegheny County Prison Employees Independent Union, 476 Pa. 27, 381 A.2d 849 (1977), where the Court disagreed with an arbitrator's dismissal of an integration clause as merely "boilerplate" stating "we are obliged to take the agreement as the parties wrote it." 381 A.2d at 854 fn. 17. The School District's obligation to bargain over a no-smoking ban was carried out, albeit indirectly, when the parties bargained and agreed upon the waiver clause.

The Association alternatively requests the Board to hold the instant case in abeyance until the grievance filed by the Association is arbitrated.5/ The Association's request for deferral is made initially in their brief filed in support of their Exceptions to the Board's prior Nisi Order dismissing the Association's charge of unfair practices after hearing. Further, the Association had requested the Board to consolidate separate charges; (1) concerning arbitrability of a grievance and (2) alleging the taking of unilateral action for the purpose of hearing and disposition. It was thus apparent that the action of the Association prior to issuance of the Nisi Order was inconsistent with any request to defer this grievance to arbitration, and to the contrary sought consolidation of an expeditious disposition of both charges of unfair practices. We therefore believe it would be inappropriate for the Board at this time to vacate or rescind its Nisi Order since the only occurrence between the Association's prior position and its position taken on Exceptions has been the intervening entry of an adverse Nisi Decision and Order. Furthermore, the Board's implementation of a policy on deferral to arbitration is one of administrative convenience. As is relevant to these proceedings, the Board believes that deferral is intended to serve as a useful tool in avoiding unnecessary administrative proceedings where grievance/arbitration proceedings may resolve the same or similar disputes which are raised in administrative proceedings before the Board. The obvious purpose therein is to save the Board from needless administrative proceedings at a preliminary stage when alternative avenues for resolution may be available. In this case the Board has expended significant efforts in hearing and deciding this case and had performed the bulk of its administrative obligation prior to any deferral request by the Association. At this late date and on these facts we do not believe that the circumstances warrant deferral to arbitration and we find that the request made by the Association is untimely.

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5/ The School District has refused to arbitrate this grievance which is the subject of unfair practice charges pending before the Board and docketed to Case No. PERA-C-10,335-C.

## ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employee Relations Act, the Pennsylvania Labor Relations Board

HEREBY ORDERS AND DIRECTS

that the Exceptions filed by the Waynesboro Education Association to the Board's Nisi Decision and Order of March 3, 1978, be and the same are hereby dismissed and the Nisi Decision and Order be the same is hereby made absolute and final.

SIGNED, SEALED AND DATED at Harrisburg, Pennsylvania, this second day of February, 1979.

PENNSYLVANIA LABOR RELATIONS BOARD

S/ ____________________
KENNETH F. KAHN, CHAIRMAN

S/ ____________________
JOSEPH J. LICASTRO, MEMBER

S/ ____________________
JAMES H. JONES, MEMBER

# GLOSSARIES

# GLOSSARY I:

# NEGOTIATION TERMS

# NEGOTIATION TERMS

by Dr. Lewis T. Kohler
and Sandy Grogan

Ad Hoc Arbitrator -- An arbitrator jointly selected, by parties to the agreement to serve in a single arbitration case only.

Adhesion Agreement -- A standard printed collective bargaining contract prepared by the more powerful party to an agreement and submitted to the other party on a take-it-or-leave-it basis.

Adverse Action -- Adverse actions are discharges, suspensions for more than 30 days, furloughs without pay, optional retirement, or reduction in position or compensation requested by management secured by duress, intimidation or deception.

Advisory Opinion -- A view by which an arbitrator gives his/her opinion as to employer-employee rights of either party to a contract. It is not binding on either party.

Agency Shop -- A provision in a collective bargaining agreement which requires that all employees in the negotiating unit who do not join the exclusive representative pay a fixed amount monthly, usually as a condition of employment. Under some arrangements, the payments are allocated to the labor organization's welfare fund or to a recognized charity. An agency shop may operate in conjunction with a modified union shop.

Agreement -- A written agreement between an employer and a labor organization, usually for a definite term, defining conditions of employment, rights of employees and the labor organization, and procedures to be followed in settling disputes or handling issues that arise during the life of the agreement.

Amalgamated Local Union -- Local union composed of various departments or units organized in small organizations. Each local unit or department operates as a separate local with respect to self government.

American Arbitration Association (AAA) -- A private nonprofit organization established to aid professional arbitrators in their work through legal and teachnical services and to promote arbitration as a method of settling commercial and labor disputes.

American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) -- A federation of approximately 130 autonomous national/international unions created by the merger of the American Federation of Labor (AFL) and the Congress of Industrial Organizations (CIO) in December 1955.

Appropriate Unit -- A group of employees which a labor organization seeks to represent for the purpose of negotiating agreements; an aggregation of employees which has a clear and identifiable community of interest and which promotes effective dealings and efficiency of operations. It may be established on a plant, installation, craft, functional or other basis.

Arbiter -- Term used on occasion, in place of the term arbitrator. Usually used when one or more arbitrators can't reach an agreement, an arbiter is selected as an umpire.

Arbitrability -- Concept relative to an issue in dispute between parties that is subject to arbitration, if authorized by the contract, provided all necessary steps have been taken prior to the arbitration process.

Arbitration -- Method of settling employment disputes through recourse to an impartial third party, whose decision is usually final and binding. Arbitration is voluntary when both parties agree to submit disputed issues to arbitration and compulsory if required by law. Advisory arbitration is arbitration without a final and binding award.

Arbitration Award -- Final and binding decision of the arbitrator in full settlement of a dispute between two parties to a collective bargaining agreement.

Arbitrator -- An impartial third party to whom disputing parties submit their differences for decision. An ad hoc arbitrator is one selected to act in a specific case or a limited group of cases. A permanent arbitrator is one selected to serve for the life of the agreement or a stipulated term, hearing all disputes that arise during this period.

Area Agreement -- Negotiated agreement covering a specific geographical area, its terms and conditions governing all organizations which participate in the collective negotiations.

Armed Truce Management-Labor Relationship -- Management considers union a necessary evil. Union challenges every action by management. Management jealously guards management rights.

Authorization Card -- A statement signed by an employee authorizing a labor organization to act as his representative in dealing with the employer, or authorizing the employer to deduct labor organization dues from the employee's pay.

Award -- An award is the decision which the arbitrator renders after taking testimony and hearing arguments from both sides. The award is usually accompanied by an opinion in which the arbitrator explains how he came to his conclusions.

Back Pay Award -- A National Labor Relations Board ruling concerning the alount of dollars an employee would have earned if he was not discharged unfairly. Monies earned is usually less than monies received while unemployed.

Bargaining Agent -- The labor organization certified by national, state or provisional labor agency to represent a majority of employees in an appropriate bargaining unit and to be the exclusive bargaining agent for those employees.

Bargaining Rights -- Legally recognized right of the labor organization to represent employees in negotiations with employers.

Bargaining Unit -- Group of employees recognized by the employer or designated by an authorized agency as appropriate for representation by a labor organization for purposes of collective negotiations.

Bilateralism -- System whereby the parties in an employee-management relationship have an equal voice in the determination of personnel polices practices and other matters affecting their working conditions. The employee's views are expressed through their elected representatives, the labor organizations. Management and labor organizations use the collective bargaining process to determine conditions of employment.

Blacklist -- A list of union members mailed to employers to advise them of labor activities of applicants for work.

Blue Sky Bargaining -- Unrealistic and unreasonable demands in negotiations by either the union or the employer, where neither concedes anything and demands the impossible.

Boiler Plate -- A standard clause which may appear in any contract, and which negotiators use and accept verbatim instead of creating an appropriately worded clause to insert in their own collective bargaining agreement.

Boycott -- Effort by a labor organization, usually in collaboration with other labor organizations, to discourage the purchase, handling or use of products of an employer with whom the labor organization is in dispute. When such action is extended to another employer doing business with the employer involved in the dispute, it is termed a secondary boycott.

Bread And Butter Unionism -- Union emphasis on higher wages and better working conditions through collective bargaining rather than political action or radical reform of society. Term is used to characterize the objectives of unions.

Building Representative -- A local union's representative in a plant or department elected by union members (or sometimes appointed by the union) to carry out union duties, adjust grievances, collect dues and solicit new members. Shop stewards are usually fellow employees, and perform duties similar to those of building representatives in public schools.

Business Agent -- Generally a full-time paid employee or official of a local union whose duties include day-to-day dealing with employers and employees, adjustment of grievances, enforcement of agreements and similar activities.

Card Check -- Procedures whereby signed authorization cards are checked against a list of employees in a prospective negotiating unit to determine if the labor organization has majority status. The employer may recognize the labor organization on the basis of this check without a formal election. Card checks are often conducted by an outside party, e.g., a respected member of the community.

Certification -- Recognition of the labor organization based on the mandatory procedure for determining the exclusive representative of an appropriate unit.

Challenged Ballot -- A vote that is questioned by one of the observers at a National Labor Relation Board or state/provincial agency election.

Check-Off -- Practice whereby the employer, by agreement with the labor organization (upon written authorization from each employee where required by law or agreement), regularly withholds organizational dues from employees salary payments and transmits these funds to the organization. The check-off is a common practice and is not dependent upon the existence of a formal organizational security clause, or an agreement of terms of employment. The check-off arrangement may also provide for deductions of initiation fees and assessment.

Closed Shop -- A form of organizational security provided in an agreement which binds the employer to hire and retain only organization members in good standing. The closed shop is prohibited by the Labor Management Relations Act of 1947 which applies, however, only to employers and employees in industries affecting interstate commerce.

Collective Bargaining -- The performance of the mutual obligations of the employer and the exclusive representative to meet at reasonable times to confer and negotiate in good faith, and to execute a written agreement with respect to terms and conditions of employment except that by any such obligation neight party shall be compelled to agree to proposals or make concessions.

Company Union -- An organization of employees of a single employer not affiliated with a national labor organization.

Compelling Need -- The only basis upon which regulations issued by an agency or by a primary national subdivision of any agency may serve as a bar to negotiations with a labor organziation.

Compulsory Arbitration -- Third party dispute settlement required by state and federal laws.

Conciliation -- Efforts by a neutral party directed to the accommodation of opposing viewpoints in a labor dispute in order to bring about a voluntary settlement. In current usage, the terms conciliation and mediation are used interchangeably, although technically a conciliator plays a less active role than a mediator in a labor dispute.

Consent Award -- An award which was determined by the parties themselves and which an arbitrator consents to make. May be made prior, during the arbitrator's hearing or before an arbitrator renders a decision.

Consolidation -- A procedure to combine existing bargaining units into one or more larger appropriate bargaining units.

Constructive Discharge -- Action by an employer designed to get rid of an employee, not by discharge, but by making conditions of employment so bad that the employee "quits".

Consultation -- An obligation on the part of employers to consult the labor organization on particular issues before taking action on them. In general, the process of consultation lies between notification to the labor organization, which may amount simply to providing information, and negotiation which implies agreement on the part of the labor organization before the action can be taken.

Continuous Negotiating Committees -- Committees established by employers and employee organizations in a collective negotiating relationship to keep an agreement under constant review, and to discuss possible changes in it long in advance of its expiration date. The continuous committee may provide for third-party participation.

Contract -- Term used to refer to the Collective Bargaining Agreement between an employer and a labor organization.

Contract Bar -- A denial of a request for a representation election because of the existence of a collective agreement.

Contract Bar Open Time Period -- The time period of 30 days between the 90 day and the 60 days prior to the termination date of a contract during which a second union can and may file for an election among the employees of a bargaining unit which has already been certified as the exclusive bargaining agent.

Cooling-Off Period -- Time which must elapse, by law, before any kind of work stoppage may start.

Craft Union -- A labor organization which limits membership to workers having a particular craft or skill or working at closely related trades. In practice, many so-called craft unions also enroll members outside the craft field, and some come to resemble industrial unions in all major respects. The traditional distinction between craft and industrial unions has been substantially blurred.

Crisis Bargaining -- Collective bargaining taking place under the shadow of an imminent strike deadline, as distinguised from extended negotiations in which both parties enjoy ample time to present and discuss their positions.

Cross-Checking -- A device sued by the National Labor Relations Board and state agencies to determine whether a union's claim to represent a majority of employees was valid and correct.

Decertification -- Withdrawal of a labor organization's official recognition as exclusive negotiating representative.

Demand for Arbitration -- A formal request made by one party to the other for arbitration of a particular dispute under the arbitration clause of the contract.

Determining Body -- The body who has final authority to make a decision on matters under discussion within the scope of representation.

Dispute -- Any disagreement between an employer and a labor organization which requires resolution in one way or another.

Division of Labor Standards -- Division of U.S. Department of Labor which develops better labor relations in practice, legislation and labor law administration and management.

Election Bar -- A one-year period following a representational election in which there can be no other elections to challenge an exclusive representative status. In the event the election fails to result in any exclusive representative, the one-year election bar stands and there cannot be another election held in the same unit. This bar allows a period of stability for the parties involved, i.e., employees, management and the labor organization.

Employer Association -- Organization sponsored by the employer primarily for the purpose of presenting a united front in dealing with all organized employees.

Escalator Clause -- Provision in an agreement stipulating that wages are to be automatically increased or reduced periodically according to a schedule related to changes in the cost of living, as measured by a designated index or, occasionally, to another standard, e.g., an average earnings figure. Term may also apply to any tie between an employee benefit and the cost of living, as in a pension plan.

Escape Clause -- General term signifying release from an obligation. One example is found in maintenance-of-membership arrangements which give union members an "escape period" during which they may resign from membership in the union.

Exclusive Bargaining Agent -- When a union is certified as the sole collective bargaining agent in a particular unit for all employeees, non-union as well as union.

Exclusive Recognition -- The status conferred on a labor organization which receives a majority of the votes cast in a representation election, entitling it to act for and negotiate agreements covering all employees included in an appropriate bargaining unit.

Fact Finding -- Process whereby the positions of labor and management in a particular dispute are reviewed by an impartial third party or panel in order to focus attention on the major issues and to resolve differences as to facts. The fact-finder or fact-finding panel may merely report a determination of the facts on the theory that the facts are so clear that the parties will perceive a solution of their differences. More frequently, the finding of facts is coupled with recommendation for settlement. Where a recommending is made, particularly if it is made public, it exerts pressure on the parties to accept the recommendation.

Fact-Finding Board -- A group of individuals appointed to investigate, assemble, and report the facts in an employment dispute, sometimes with authority to make recommendations for settlement.

Fair Labor Standards Act -- Wage-Hour Law of Federal Government which establishes minimum wage and overtime rates and child labor restrictions.

"Favored Nations" Clause -- Provison in agreement indicating that one party to the agreement (union or employer) shall have the opportunity to share more favorable terms negotiated by the party with another employer or union.

Featherbedding -- A labor practice requiring an employer to pay for services that are not performed. Featherbedding is considered to be an unfair labor practice and is outlawed by the Taft-Hartley Act. It may also take the form or deliberate slowdowns in production as insistence that a job be performed by a particular individual, though others can do it as well.

Federal Mediation and Conciliation Service (FMCS) -- An independent Federal agency which provides mediators to assist the parties involved in negotiations, or in a labor dispute, in reaching a settlement. It provides lists of suitable arbitrators on request and engages in various types of "preventive mediation". Mediation services are also provided by several state agencies.

Fink -- A professional strike-breaker hiring out during a strike for a special bonus or other considerations.

First-Level Supervisor -- The individual who provides routine supervision and direction to the employee. He usually serves as the initial recipient of any grievance and is responsible for interpreting any rule, agreement, or policy to the employee.

Free Riders -- Derogatory term applied by unions to non-members who share in benefits resulting from union activities without paying union dues.

Globe Doctrine -- National Labor Relations Board policy that allows employee's choice to govern its designation of the bargaining unit where more than one form of unit is appropriate.

Good Faith Bargaining -- Requires employer and union to meet at reasonable times and to confer in good faith with respect to wages, hours and other terms and conditions of employment, the negotiation of an agreement, or any question arising under an agreement, and does not require either party to agree to the other's proposals.

Grievance -- Any complaint or expressing dissatisfaction by an employee against an action by management in connection with his job, pay or other aspects of his employment. Whether such complaint or expressed dissatisfaction is formally recognized and handled as a "grievance" depends on the scope of the grievance procedure.

Grievance Adjustment -- Procedure for settling or adjusting a grievance. This varies with the collective bargaining agreement.

Grievance Arbitration -- The final and binding decision of the arbitrator(s) in disputes involving the infringements of employer-employee rights.

Grievance Committee -- The group of management and/or union representatives that reviews grievances after they have come up from the lower steps of the overall grievance procedures.

Grievance Machinery -- The strategies, set up by collective bargaining agreement's provisions to resolve problems which arise or may arise, in the administration and interpretation of the contract.

Grievance Procedure -- A procedure applicable only to employees in the bargaining unit for the consideration and orderly resolution of disputes over issues within the scope of the procedure.

Harmony Clause -- Clause in a collective bargaining agreement which sets the tone of the overall employer-employee relationships during the life of the agreement.

Hatch Act -- Federal law which prohibits corporations and labor organizations to donate money to candidate running for office or for the promotion of legislation.

Hearing -- The formal meeting at which each party presents its exhibits, witnesses, and arguments to the arbitrator.

Hitting the Bricks -- Term used to denote the act of union members picketing an employer.

Impartial Chairman -- An arbitrator employed jointly by a labor organization and an employer, usually on a long-term basis, to decide all disputes or specific kinds of disputes arising during the life of the contract. The functions of an impartial chairman often expand with experience and the growing confidence of the parties.

Industrial Union -- A union that represents all or most of the production, maintenance and related workers, both skilled and unskilled, in an industry or company. Industrial unions may also include office, sales and technical employees of the same companies.

Injunction -- Court order restraining one or more persons, corporations or unions from performing or not performing some act which the court believes would result in irreparable injury to property or other rights.

Interest Arbitration -- An impartial third party resolves disputes concerning contract negotiations. Used sparingly since it is frequently considered a substitute for collective bargaining.

Interim Contract -- An agreement which is designed to maintain conditions of employment pending the settlement of an impasse or until a new contract is signed by both parties.

International Representative -- Generally, a full-time employee of a national or international union whose duties include assisting in the formation of local unions on union business, assisting in negotiations and grievance settlements, settling disputes within and between locals, etc.

International Union -- A union claiming jurisdication both within and outside the United States.

Internal Disputes Plan -- The AFL-CIO's in-family procedure for resolving disputes between and among affiliated unions. The plan provides for submission of disputes to impartial umpires with right to appeal to the AFL-CIO's executive council. Its purpose is to protect established relationships not paper jurisdiction -- of affiliaites.

Joint Bargaining -- Process in which two or more unions join forces in negotiating an agreement with a single employer.

Journeyman -- Employee in a traditional craft or trade field who has completed an apprenticeship period and mastered the work involved in one field.

Jurisdictional Dispute -- Conflict between two or more labor organizations over the organization of a particular establishment or whether a certain type of work should be performed by members of one organization or another.

Kickbacks -- Forced refunds of wages, usually to an employer or one of his employees.

Knights of Labor -- An early affiliation of labor organizations. Forerunner of the AFL.

Labor Management Relations Act of 1947 (Taft-Hartley Act) -- Federal law, amending the National Labor Relations Act of 1935 (Wagner Act). The Taft-Hartley Act defined and made illegal a number of unfair labor practices by unions, and retained the definition of unfair labor practices as applied to employers. The act does not apply to employees in a business or industry where a labor dispute would not affect interstate commerce. Other major exclusions are: employees subject to the Railway Labor Act, agricultural workers, government employees, domestic servants and supervisors. Amended by Labor-Management Reporting and Disclosure Act of 1959 (Landrum-Griffin).

Labor-Management Reproting and Disclosure Act of 1959 (Landrum-Griffin Act) -- A Federal law designed to "eliminate to prevent improper practices on the part of labor organizations, employers, etc." Its seven titles include a bill of rights to protect members in their relationships with unions; regulations of trusteeships, standards for elections; and fiduciary responsibility of union officers.

Labor Organizer -- A person, on the payroll of a union, assigned to a particular area or region to attempt to recruit union members.

Local Union - Basic unit of the labor organization.

Lockout -- Action taken by an employer to close down his plant to keep workers from their jobs in order to force them to accept his position in a labor controversy. Lockouts are lawful unless they violate a collective bargaining agreement to seek a goal that the law declares to be an unfair practice. The lockout to an employer is what the strike is to the union. A major weapon to force agreement. Lockouts are not commonly used, but some labor authorities point out that what the public usually considers to be a strike may also be a lockout, since the employer closes his plant by refusing to meet union demands.

Mail Ballots -- Procedure used to conduct an election by governmental or private agencies where membership of a union is geographically distributed rather than concentrated in one area.

Maintenance-of-Membership Clause -- A clause in a collective bargaining agreement providing that employees who are members of the labor organization at the time the agreement is negotiated, or who voluntarily join the organization subsequently, must maintain their membership for the duration of the agreement, or possibly a shorter period, as a condition of continued employment.

Majority Representation -- Designation of a union to be a bargaining unit for a group of employees within the unit.

Management-Labor Cooperation -- Active policy of union-employer cooperation under the collective bargaining agreement for purposes of promoting their common mission.

Management-Labor Relations -- Term used in this Handbook to denote all matters arising out of the employer-employee relationship which involves collective action on the part of the employees.

Management Rights -- The rights involving hiring, production, scheduling, and discharging which generally are reserved to the Administration of the District and are not proper topics for negotiations at the table.

Management-Union Cooperation -- Joint activity based on the theory which states that benefits to the welfare of the employer also benefit the employee. Parties work together for total trust and respect.

Massillion Doctrine -- Policy governing application of AFL-CIO internal disputes plan to unions in the public sector where exclusive recognition is not available. The protection afforded an "established bargaining relationship" by Article XX of the AFL-CIO constitution is extended by Massillion to "Whatever bargaining relationship a given union has been successful in establishing with the employing governmental agency" when exclusive representation of the bargaining unit is not permitted. So called because policy was enunciated in a dispute between the Laborers International Union and the American Federation of State, County and Municipal employees at Massillion State Hospital in Ohio.

Mediation -- A procedure for third-party settlement of disputes. It involves the utilization of a third-party to facilitate the reaching of an agreement voluntarily between the parties at the bargaining table.

Meet and Confer Negotiations -- Term for process of negotiating terms and conditions of employment intended to emphasize the differences between public and private employment conditions. Negotiations under "meet and confer" laws usually imply discussions leading to unilateral adoption of policy by legislature body than written contract and take place with multiple employee representatives rather than an exclusive bargaining agent.

Members Only-Agreement -- Contract recognizing a labor organization as bargaining agent for its own members.

Memorandum of Understanding -- A written memorandum, jointly prepared by the parties incorporating matters on which agreement is reached through meeting and confering between the City's management representatives and representatives of recognized employee organization.

Minority Union -- labor organization which does not have exclusive bargaining rights or majority status but still maintains its identity as a group within an organization, and may in the future be recognized as the majority union.

Moonlighting -- The simultaneous holding of more than one paid employment by an employee, e.g., a full-time job and a supplementary job with another employer.

Multi-Employer Bargaining -- Collective bargaining between a union or unions and a group of employers, usually represented by an employer association, resulting in a uniform or master agreement.

National Labor Relations Act of 1935 (Wagner Act) -- Basic federal act guaranteeing employees the right to organize and bargain collectively through representatives of their own choosing. The Act also defined "unfair labor practices" as regards employers. It was amended by the Labor Management Relations Act of 1947 and the Labor-Management Reporting and Disclosure Act of 1959.

National Labor Relations Board (NLRB) -- Agency created by the National Labor Relations Act (1935) and continued through subsequent amendments. The functions of the NLRB are to define appropriate bargaining units, to hold elections to determine whether a majority of workers want to be represented by a specific union or no union, to certify unions to represent employees, to interpret and apply the Act's provisions prohibiting certain employer and union unfair practices, and otherwise to administer the provisions of the Act.

National Union -- A union composed of a number of affiliated local unions. The Bureau of Labor Statistics, in its union directory, defines a national union as one with agreements with different employers in more than one state, or an affiliate of the AFL-CIO or a national organization of government employees.

Negotiation -- Performance by duly authorized management representatives and duly authorized representatives of a certified employee organization of their mutual obligation to meet at reasonable times and to confer in good faith with respect to wages, hours, and other terms and conditions of employment, and includes the mutual obligation to execute a written document incorporating any agreement reached. This obligation does not compel either party to agree to a proposal or make a concession. Agreements concerning any matters within the exclusive jurisdiction of the Board of Supervisors or concerning any matters not otherwise delegated by the Board shall become binding when executed by the Board of Supervisors and affected certified employee organizations. Agreements concerning matters within the exclusive jurisdiction of management representatives, or otherwise delegated to them by the Board, shall become binding when executed by said affected management representatives and affected certified employee organizations.

No-Solicitation Rule -- Regulation adopted by employers which prohibits solicitation of union members or dues on company time or property.

No-Strike and No-Lockout Clause -- Provision in a collective agreement in which the labor organization agrees not to strike and the employer agrees not to lockout for the duration of the contract.

No-Suit -- Employer agreement not to sue a union in an impasse situation arising during the life of the contract.

Non-Member Picketing -- Picketing by strangers who are not employees of the organization being picketed.

Open-End Agreement -- Collective bargaining agreement with no definite termination date, usually subject to reopening for negotiations or to termination at any time upon proper notice by either party.

Open Shop -- A place of employment where union membership is not a condition of employment.

Organizational Picketing -- Type of picketing by a union to force the employer to accept it as the bargaining agent for the employees of the organization.

Package Settlement -- The total money value of a change in wages or salaries and supplementary benefits negotiated by an employee organization in a contract renewal or reopening.

Parol Evidence Rule -- Evidence presented by witnesses in Court or in arbitration hearing as to the making of a contract.

Past Practice -- Existing practices sanctioned by use and acceptance that are not specifically included in the collective bargaining agreement, except perhaps by reference to their continuance.

Paternalism -- Generally used in a derogatory sense, describing the "fatherly" interest of an employer in his workers. Unions have held that the paternalistic attitude of the employer, which sometimes led to minute regulation of the affairs of the employee, is designed to frustrate unionization and keep the worker dependent on the good will of the employer.

Pattern Bargaining -- The practice whereby employers and labor organizations reach collective agreements similar to those reached by the leading employers and labor organizations in the field.

Permit -- A permit to work while a union member's application for union membership is being processed.

Permit Card -- A document issued by a union, for a fee, which permits an employee who is not a union member, to work on the job covered by the issuing union's collective bargaining agreement.

Picketing -- Patrolling, usually near the place of employment, by members of the labor organization to publicize the existence of a strike, persuade employees and the public to boycott the employer. *Organizational* picketing is carried on by the labor organization for the purpose of persuading employees to join the organization or authorize it to represent them. *Recognitional* picketing is carried on to compel the employer to recognize the labor organization as the exclusive negotiating agent for his employees. *Informational* picketing is directed toward advising the public about the issues in dispute.

Pork Chopper -- Term used to denote a labor organizer which points out there will be more money to buy food as one of the real benefits of union membership.

Positive Strike -- Work stoppage which takes place on the basis of specific desires and demands of the employees for change; one to improve conditions.

Preferential Hiring -- Employer agrees to hire labor union members as long as the union is able to fill the positions.

Prehearing Conference -- A meeting between the arbitrator and the parties prior to the actual hearing of the case in dispute in order to glean the issues in the case and to examine the claims of the parties and their various defenses.

Preventive Mediation --Procedures designed to anticipate potential problems of employee relations. These procedures may involve early entry by a third party into employment disputes before a strike threatens.

Primary Boycott -- Concerted action by a union in which it seeks to prevent the use, purchase or handling of an employer's product or service.

Professional Employee -- One whose work is predominantly intellectual and varied in character, requires exercise of discretion and judgement and knowledge of an advanced nature customarily acquired at an institution of higher learning, and is of such a character that the output or result accomplished cannot be standardized in relationship to a given period of time. It is recognized generally that professionals are entitled to separate bargaining units unless they elect to be represented.

Professional Negotiation -- Term used originally by National Education Association to describe an alternative to collective bargaining, and to prevent a split in profession's ranks between teachers and school administrators. The distinction between "professional negotiations" and "collective bargaining" has faded.

Professional Sanctions -- Technique developed by National Education Association as an alternative to strikes. Sanctions may include any one or combination of the following: Public declaration of unsatisfactory working conditions; recommendation that members of the profession refuse to accept employment in the area; censure, suspension or expulsion of members who take jobs in the area; campaign to mobilize public opinion and political action to bring about change.

Public Agency -- Every governmental subdivision, every district, every public and quasi-public corporation, every public agency and public service corporation, and every town, city, county, city and county and municipal corporation, whether incorporated or not and whether chartered or not. "Public agency" does not mean a school district or a county board of education or a county superintendent of schools or a personnel commission in a school district having merit system.

Raiding -- Term applied to a labor organization's attempt to enroll members belonging to another labor organization or employees already covered by a collective agreement negotiated by another labor organization, with the intent to usurp the latter's bargaining relationship. A no-raiding agreement is a written pledge signed by two or more labor organizations to abstain from raiding and is applicable only to signatory organizations.

Ratification -- Formal approval of a newly negotiated agreement by vote of the labor organization members affected.

Recognition -- Employer acceptance of a labor organization as authorized to negotiate, usually for all members of a negotiating unit.

Reopening Clause -- Clause in a collective agreement stating the time or the circumstances under which negotiations can be requested, prior to the expiration of the contract. Reopenings are usually restricted to salaries and other specified economic issues, not to the agreement as a whole.

Replacements -- Workers hired to replace strikers.

Reporting Pay -- Minimum pay guaranteed to a worker who is scheduled to work, reports for work, and finds no work available, or less work then can be done in the guaranteed period (usually 3 or 4 hours).

Representation Election -- Election conducted to determine whether the employees in an appropriate unit desire a labor organization to act as their exclusive representative.

Right-To-Work Law -- Legislation which prohibits any contractual requirement that an employee join a labor organization in order to get or keep a job.

Rights Arbitration -- A third party decision which may interpret language in a negotiated agreement to resolve disputes that arise in implementing provisions of the agreement. This form of arbitration determines what the rights of the parties are in relationship to the negotiated agreement.

Runaway -- A plant or organization which transfers to another geographical area in order to destroy a union's effectiveness and to avoid collective bargaining.

Runoff Election -- A second election conducted after the first produces no winner according to the rules. If more than two options were present in the first election, the runoff may be limited to the two options receiving the most votes in the first election.

Scab -- A term, usually used by union members, which applies to workers who refuse to join co-union members on a picket line during a strike. Also, used to identify union members which pass through a union picket line.

Scope of Negotiations -- The issues concerning personnel policies and practices and other matters affecting working conditions about which an agency and a labor organization having exclusive recognition may negotiate.

Secondary Boycott -- Pressure exerted by a union directly on a party, who then exerts pressure against the real adversary of the union.

Showing of Interest -- Support that a union must demonstrate, usually by signed authorization cards, by employees in proposed bargaining unit before an election will be held. Most common requirement is showing of interest among 30% of unit employees.

Sit-Down Strike -- A work stoppage in which the employees refuse to work but remain inside the place of employment.

Slowdown -- A sustained and concerted effort by employees to do the required amount of work during their hours of employment.

Standard Agreement -- Collective bargaining agreement prepared by a national or international union for use by or guidance of its local unions, designed to produce standardization of practices within the union's bargaining relationships.

Standards of Conduct -- Ethical and democratic standards a union must meet to qualify as a bona fide union, e.g., file financial statements and hold periodic elections for officers.

Strike -- Temporary stoppage of work by a group of employees (not necessarily members of a union) to express a grievance, enforce a demand for changes in the conditions of employment, obtain recognition or resolve a dispute with management. Wildcat or Outlaw Strike is a strike not sanctioned by union and which may violate a collective agreement. Quickie Strike is a spontaneous or unannounced strike of short duration. A Slowdown is a deliberate reduction of output without an actual strike in order to force concessions from an employer. Sympathy Strike is a strike during which employees remain in the workplace, but refuse to work or allow others to do so. A General Strike involves all organized employees in a community.

Strike Benefits -- Monies paid by a union to its striking workers to help them with their personal budgets during a strike approved by a union.

Strike Breakers -- Employees hired to "break" a strike.

Strike Vote -- Vote conducted among members of a labor organization to determine whether or not a strike should be called.

Subcontracting -- A strategy followed by some employers of permitting work to be done by contract to another firm, rather than having the regular employees do the work.

Submission Agreement -- A jointly signed document stating the nature of the dispute and affirming the parties' intention to arbitrate and to abide by the award.

Superseniority -- A position on the seniority list ahead of what the employee would acquire solely on the basis of length of service or other general seniority factors. Usually such favored treatment is reserved to union stewards or other workers entitled to special consideration in connection with layoff and recall to work.

Supervisors -- Employees having the full managment rights: rights to hire, fire or recommend such actions to the employer.

Sweetheart Agreement -- A collective bargaining agreement exceptionally favorable to a particular employer, in comparison with other contracts, implying less favorable conditions of employment than could be obtained under a legitimate collective bargaining agreement.

Taylor Law -- Popular name of New York State's public employee bargaining statute, which was enacted in 1967 following the report of a commission of Governor Nelson Rockefeller and headed by Professor George W. Taylor of the University of Pennsylvania's Wharton School of Finance and Commerce.

Time Work Contracts -- Payment on an hourly rate without regard to production amount.

Top-Down Agreement -- Contract between an employer and the head of the labor organization without regard for the employee members of the union.

Trades Council -- Associated groups of labor unions in a particular area which may bargain with a group of employers.

Tripartite Board -- A board consisting of a representative of each party and an impartial arbitrator.

Umpire -- A single arbitrator retained for life of a collective bargaining agreement.

Unaffiliated Union -- A local or national union organization which is not connected with AFL-CIO.

Unfair Labor Practice -- Actions which agency management and labor organizations are to avoid in relating to each other throughout the collective bargaining process.

Unfair Labor Practice Strike -- Work stoppage to protest an employer's unfair labor practices.

Unfair Listing -- A blacklist device used by unions against employers with whom the union is involved in a dispute or whom the union seeks to force certain actions.

Unilateral Action -- Activity by one side of the parties to a collective bargaining agreement usually done to undercut the other party.

Union Certification -- Official recognition by the National Labor Board, or a state and provincial labor agency that the labor organization is the duly authorized agency for collective bargaining purposes for the employees in the unit.

Union Security -- Protection of a union's status by a provision in the collective agreement established a closed shop, union shop, agency shop or maintenance-of-membership arrangement.

Union Shop -- Provision in a collective agreement that requires all employees to become members of the union within a specified time after hiring (typically 30 days), or after a new provision is negotiated, and to remain members of the union as a condition of continued employment.

Union Card Shop -- Issued by a union to an employer to show that the employer is operating under conditions approved by the union.

Unit -- Shortened form of "unit appropriate for collective bargaining". An appropriate unit includes all employees sharing a community of interests which can be served through collective bargaining.

Unity of Interest -- Test applied by the Courts to determine the validity of picketing.

Voluntary Arbitration -- The referral of an impasse by the voluntary agreement of the parties to one or more impartial arbitrators for a binding and final decision.

Wage Award -- An arbitrator's decision of the correct rate of pay.

Whipsawing -- The tactics of negotiation with one employer at a time, using each negotiated gain as a lever against the next employer.

Whitelist -- List maintained by employers for workers who are eligible for employment mainly because they are not union members.

Work-In-Harmony-Relationship -- Management considers union an asset as well as a liability. Good communication between the parties. Compromise.

Work Jurisdiction -- Claim by a union that its members have the sole right to perform certain work.

Work Restrictions -- Limitations, usually placed by the union, on the type of work which union members can accomplish on the job.

Work Stoppage -- A temporary halt to work, initiated by workers or employer, in the form of a strike or lockout. This term was adopted by the Bureau of Labor Statistics to replace "strikes and lockouts".

Working Rules -- Union regulations which specify conditions under which the union member can work.

Yellow Dog Contract -- An agreement (either written or oral) between an employer and a worker, which provides that as a condition of employment the worker will refrain from joining a union or, if he is a member, will leave the organization. The purpose of the yellow dog contract is essentially to prevent employees from organizing.

Zipper Clause -- An agreement provision specifically barring an attempt to reopen negotiations during the term of the contract.

# GLOSSARY II

# PERSONNEL RELATION TERMS

# PERSONNEL RELATION TERMS

By Dr. Lewis T. Kohler and
Judith Jablonski

Adjustment Procedure -- Provisions for the hearing and adjustment of employee grievances.

Age Discrimination in Employment Act -- Federal Law which prohibits employment discrimination between the ages of 40 to 65 years of age by employers, employment agencies and labor unions.

Administrative Employees -- Management employees who are exempt from the wage-hour law if regulations are met or exceeded.

Affirmative Action Program -- Employer plan designed to increase the use of minority races and groups in occupations and professions.

Allocation -- The placement of a class on a salary schedule or rate.

Anniversary Date -- The date upon which an employee is granted salary step advancement earned by completion of a required period of service. This is the first day of the pay period next following completion of the required period of service.

Annual Improvement Factor -- Wage increases granted automatically each contract year, which are based upon increased productivity.

Appeal -- A protest by an employee regarding an administrative action actually or potentially detrimental to him.

Appointment -- The official act of the appointing power in approving the employment of a person in a specific position.

Apprentice -- An employee assigned to an established apprenticeship position requiring paid on-the-job and unpaid classroom training in accordance with the Apprenticeship Standards.

Armed Forces -- For the purpose of military leave of absence, the United States Air Force, Army, Navy, Marine Corps, Coast Guard, Revenue Marine Service, Army Nurse Corps, and Navy Nurse Corps. For the purpose of veteran's credit in an open examination, the United States Air Force, Army, Navy, Marine Corps, and Coast Guard.

Assault and Battery Leave of Absence -- A type of industrial accident leave granted with pay, regardless of length of service, for absence because of an injury resulting from an assault and/or battery that was incurred while performing assigned duties.

Assignment -- Placement of an appointee in a position. Also the position in which he is placed.

Assignment Basis -- The portion of the year for which employment is authorized for a specific position or class.

Back Pay -- Wages due to past services and work.

Bedeaux Productivity System -- Named after Charles Bedeaux who developed a required productivity rate for every kind of job and task.

Bereavement Leave -- Paid leave of limited duration granted to an employee upon the death of a relative or certain close friends.

Bumping Rights -- The right of an employee, under certain conditions, to displace an employee with less seniority in a class.

Casual Absence -- Informal absence without loss of any pay on one day or less which may be granted, under specified conditions, to employees by division heads or their designated representatives.

Certificated Service -- All employees required by law to possess credentials issued by the State Department of Education and the positions which are limited to those who possess such credentials.

Change of Location -- The reassignment of an employee from one position to another position in the same class, but in a different administrative unit.

Change of Service Assignment -- An employee's change from the certificated to the classified service of the District, or vice versa.

Civil Rights Act of 1964, Title VII -- Law of Federal Government prohibiting discrimination in employment on basis of sex, color, religion, national origin by all organizations.

Class -- A category of positions with similar duties and responsibilities, to which the same title, salary, entrance qualifications, and test of fitness apply.

Class Description -- A description, approved by the Personnel Commission, of the nature and level of duties of the positions in a class.

Classification -- The act of placing a position in a class.

Concurrent Assignment -- The short-term assignment of two regular incumbents to the same position at the same time, for the purpose of giving a successor an opportunity to obtain on-the-job orientation from an incumbent who is leaving.

Conditional Employee -- A provisional employee who does not meet the entrance qualifications for the class and who was, therefore, ineligible to compete in a merit system examination for that class at the time of his conditional provisional appointment.

Credited Service -- Years of employment counted for retirement, severance pay, seniority.

Day -- The period of time between any midnight and the midnight following.

Demotion -- A change in assignment of an employee from a position in one class to a position in another class that is allocated to a lower maximum salary before application of any special salary adjustment.

Differential -- Salary allowance in addition to the basic rate or schedule based upon additional skills, responsiblities, or night work. Also the size of the interval between salary schedules or rates of related classes, before application of any special salary adjustments. Salary-allowance differentials are divided into the following categories:

| | |
|---|---|
| Long-term: | Those which are based on the special requirements of a particular position or the authorized use of special skills by a particular incumbent. |
| Short-term: | Those which are paid for the performance of a specific task which is not assigned to a particular position or incumbent on a continuing basis. |

Discharge or Dismissal -- Separation from service for cause.

Downgrading -- Reassignment of employees to tasks or jobs requiring lower skills and with lower rates of pay.

Eligibility List -- A rank order list of the names of persons who have qualified in a merit system examination for the selection of classified employees for a specific class.

Emergency Appointment -- A provisional appointment for a period not to exceed 15 working days to prevent the stoppage of school business when there is insufficient time to canvass elegibility lists.

Employee -- A person who is legally an incumbent of a position or who is on authorized leave of absence.

Employment List -- A list of names from which certification may be made. Includes eligibility lists, reemployment lists, and lists of persons who wish to transfer, change location, demote, be reinstated after resignation or be restored after voluntary demotion or reduction to limited-term or part-time status.

Employment Staggering -- Division of work tasks among all workers to cut down unemployment of some workers.

Entrance Qualifications -- Mandatory and desirable qualifications prescribed for those who wish to compete in examinations for a specific class.

Equal Pay Act -- Federal Law which prohibits lower wages/salary to one sex than to others for equal work.

Examination -- The process of testing and evaluating the fitness and qualifications of applicants.

Fiscal Year -- July 1 to June 30.

Fringe Benefits -- Generally, supplements to wages or salaries received by employees at a cost to employers. The term encompasses a host of practices (paid vacations, pensions, health and insurance plans, etc.).

Full-Time Position -- A position for which the assigned time, when computed on an hourly, daily, weekly, or monthly basis, is equal to or greater than 50% of the normally assigned time of the majority of employees in the classified service.

Governing Board -- The Board of Education of the School District.

Grievance -- An employee complaint concerning conditions of employment, not including appeals of disciplinary actions or requests for classification study or salary review.

Hearing -- Formal review, in the presence of the parties involved, of evidence in connection with an action affecting an employee, concerning which the employee has filed an appeal.

Hearing Officer -- A qualified person employed by Personnel to hear and make recommendations on appeals from disciplinary actions for nonmedical reasons.

Job Classification -- Job rating based on analysis of the requirements and knowledge of the work to be completed.

Job Evaluation -- System for fixing the relative value of jobs as they exist in organization.

Illness -- Any pronounced deviation from a normal, healthy state which makes it disadvantageous to the School District and/or detrimental to the employee for him to be at work.

Illness Leave -- Paid or unpaid leave given to an employee because of personal illness or injury. May also be used for short-term leaves for designated reasons of personal necessity.

Incumbent -- An employee assigned to a position and currently serving in or on leave from that position.

Industrial Accident or Industrial Illness Leave -- Absence because of injury or illness which arose out of and in the course of employment with the District.

Interview -- Part of the selection process, usually the final portion of an examination, for the purpose of evaluating education, experience and personal qualifications of the candidates. Also known as oral interview. Also the meeting between an eligible and an appointing power in order to discuss appointment to a specific vacancy.

Investigation -- A fact-finding procedure related to an appeal or complaint. An investigation is less formal than a hearing.

Labor Grades -- One of a series of rate steps (single or range of rates) in the wage structure of an organization. Grades are usually the outcome of some form of job or task evaluation, or of wage-rate negotiations, by which different occupations are grouped, so that occupations of equal "value" fall into the same grade and command the same rate of pay.

Layoff -- Separation from a permanent position because of lack of work or lack of funds, or because the position has been abolished or reclassified, or because an employee has exhausted all leave privileges after illness or accident.

Leader -- An employee who is temporarily given extra pay for supervisory responsibilities over a crew of three or more other employees (other than employees in a class for which the lead employee's class normally has supervisory responsibility) who work in the leaders immediate presence at one site and in the absence of another supervisory employee.

Leave of Absence -- An approved absence from duty, with or without pay, for a prescribed period of time from a class, but not necessarily from a specific position within the class.

Limited-Term Employee -- An employee who is serving in a provisional appointment, or as a substitute for a regular employee, or in a position established for a limited period of six months or less.

Loyalty Oath -- A statement required of each new employee concerning his support of the United States and State constitutions required by State law and local Board Rule.

Maternity Leave -- Leave of absence granted employee during her pregnancy and immediately following birth of her child. Time length of leave varies. Leave may be granted with or without pay.

Medical Review Board -- A board of physicians appointed by Personnel to consider and make recommendations regarding appeals from medical disqualifications.

Merging -- The act of combining two or more eligibility lists for the same class, established not more than one year apart, in order of the scores of eligibles.

Merit Increase -- An increase in employee compensation given on the basis of individual efficiency and performance.

Merit System -- A personnel system in which merit and fitness govern each individual's selection and progress in the service.

Military Leave -- Authorized absence to engage in ordered military duty.

Multiple Assignment -- A limited-term classified assignment in addition to a regular assignment.

Nepotism -- Assignment of close relatives to the same school or office.

Notice of Unsatisfactory Service -- A form used as a written reprimand.

Open Examination -- An examination which is not restricted to persons who are current permanent employees of the District, i.e., may be taken by any person otherwise qualified.

Overtime -- Authorized time worked by an employee in excess of eight hours a day and/or 40 hours a week, or five consecutive days in a workweek for employees who work an average of four hours or more per day. An employee who works an average of less than four hours per day is paid overtime for authorized time worked on the seventh day of his workweek.

Part-Time Position -- A position for which the assigned time, when computed on an hourly, daily, weekly, or monthly basis, is less than 50 percent of the normally assigned time of the majority of employees in the classified service.

Payroll Deductions -- Amounts withheld from employee's earnings by the employer for social security, federal and state income taxes, and other governmental levies; also may include organizational dues, group insurance premiums, and other employees' authorized assignments. May be called "Check-Offs".

Permanent Position -- A position established for a continuing and indefinite or unlimited period of time or for a fixed period in excess of six months.

Prerequisites -- Items such as meals, uniforms, and monetary awards provided to employees without charge and which are considered a part of employee's compensation.

Personal Necessity Leave -- Leave which may be taken for reasons of personal necessity as specified in the Education Code and Personnel rules.

Point Plan -- Job evaluation system in which job is compared against its defined evaluative factors.

Position -- A group of duties and responsibilities assigned by competent authority requiring the full or part-time employment of one person.

Performance Evaluation -- An evaluation of the work and conduct of an employee. Also refers to the form used for this purpose

Permanent Employee -- An employee who has completed a probationary period required by State Law, of paid regular service.

Prevailing Wage -- The wage prevailing in a certain locality for certain type of work.

Privilege -- A discretionary benefit which may or may not be granted, in contrast to a right which must be granted.

Probationary Period -- A trial period of required days of paid service in a class following appointment to a regular position.

Productivity -- Designed to measure the efficiency of a plant or the ability to utilize manpower and plant equipment. The most frequent in terms of output per worker are the output per man-hour.

Professional Expert -- A person employed in a professional capacity for a specified limited-term project; such persons are excluded from the classified service.

Promotion -- A change in the assignement of an employee from a position in one class to a position in another class which has a higher maximum salary before application of any special salary adjustment.

Promotional List -- An eligibility list resulting from a promotional examination limited primarily to qualified permanent employees of the District.

Provisional Appointment -- A temporary appointment to a permanent or limited-term position made in the absence of an appropriate eligibility list and subject to prescribed time limits.

Provisional Employee -- A person employed under a provisional appointment.

Ranking Plan -- Evaluation plan which compares job against job.

Real Wages -- Wages in term of goods and services that money will purchase in the marketplace.

Reallocation -- Movement of an entire class from one salary schedule or hourly rate to another salary schedule or hourly rate on the basis of either internal or external alignment or a change in the salary-setting basis for the class.

Reclassification -- The removal of a position or positions from one class and placement to another, usually based on a change in duties, responsibilities, or class concept.

Reemployment -- Return to duty of an employee who has been laid off. Also applies to employees who return to duty for a limited period after retirement.

Regular Appointment -- An appointment to a position of more than six months duration made from an eligibility list or from some other list of persons who are legally qualified; e.g., reemployment or reinstatement.

Regular Employee -- A person who has probationary or permanent status.

Rejection -- The refusal to accept an application or examine an applicant, candidate, or eligible, or the removal of an eligible's name from an eligibility or substitute and relief list.

Relief Employee -- A person hired to fill a relief position.

Relief Position -- A limited-term position of not more than six months duration which augments the number of regular positions in a given organizational unit.

Resignation -- A voluntary statement, preferably in writing, from an employee that he wishes to terminate one or all of his assignments.

Responsibility Differential -- A wage or salary differential paid, to incumbents of some positions in a class based upon variations in responsibility measurable by a quantitative criterion.

Rest Periods -- Short periods of time during which employees are allowed to leave their place of work on company time.

Restricted -- Positions whose incumbents must be from low-income groups or from designated geographical areas or who have mental handicaps or meet other specified criteria and who are not entitled to employment permanently.

Rightful Place -- Relief from racial and other job discriminations whereby workers restricted by previous unfair labor practices are placed in rightful place, usually by means of more seniority and transfer rights in an organization.

Rights -- A benefit which is bestowed by law or rule and which must be granted.

Rule of Three -- The scope of choice available to an appointing power in making a selection from an eligibility list; refers to selection from the first three eligibles ready and willing to be appointed to a specific position.

Rule of Three Ranks -- The scope of choice available to an appointing power in making a selection from an eligibility list for a technical, professional, administrative, or executive class; refers to selection from among those eligibles having any of the three highest scores who are ready and willing to be appointed to a specific position.

Salary Rate -- A specific amount of money paid for a specified period of service; i.e., dollars per hours, pay period, or month, including any long-term differential and/or special salary adjustment.

Salary Schedule -- A series of salary steps that comprise the rates of pay for a classification.

Salary Step -- One of the salary levels within the range or schedule of rates for a classification.

Salary Survey -- The collection of current wage and salary data for the purpose of determining the prevailing wage for certain types of work in private industry or other public agencies. Also, the report of such data.

Salary Year -- A cycle consisting of consecutively numbered pay periods. The first pay period of the salary year includes July 1.

School Year -- Same as fiscal year (July 1 to June 30).

Seniority -- Status secured by length of service to which certain rights attach. Used in calculating extra points for employees taking promotional examinations and for determining the order of layout as well as for certain informational purposes.

Separation -- The ending of all status as an employee.

Series -- A number of groups of classes closely related in an occupational hierarchy and arranged in a list in order to indicate occupational levels in each group.

Shift -- An employee's regularly scheduled period of work hours.

Shift Differential -- Additional pay for night work.

Shortened Range -- A salary schedule consisting of less than the usual five steps, based upon a narrow range of prevailing community rates for that occupation.

Sick Leave -- Time allowed for absence due to illness or other approved reasons.

Special Limited-Term Assignment -- A limited-term assignment to a regular position in order to avoid the potential displacement of regular employees in cases of potential changes in organization, location, classification, hours or numbers of positions.

Special Physical Injury Leave of Absence -- A form of industrial accident leave granted with pay, regardless of length of service, to an employee because of an injury resulting from an act of violence or acts of violence which occurred during the course of the employee's duty.

Special Salary Adjustment -- Any adjustment or increase approved by the Board of Education in excess of the rates recommended by Personnel. A special salary adjustment does not affect salary allocation upon promotion, demotion, transfer, or other assignment action.

Split Shift -- A working period of time in which there is a break of several hours between the hours of work.

Step Advancement -- Movement to a higher step on the salary schedule for a class as a result of having served the required number of days in paid status.

Straight Time -- Regular wages exclusive of overtime pay.

Stretch-Out -- Increase work required without increased wages/compensation.

Substandards -- Handicapped employees who cannot be expected to meet normal standards of production.

Substitute Employee -- An employee temporarily occupying a regular position during the absence of the incumbent.

Suspension -- Temporary removal of an employee from a position for cause without pay or indefinite removal preliminary to investigation of charges pursuant to the provisions of the Education Code.

Temporary -- Employment on a basis other than permanent or probationary; i.e., limited-term status. Also used to denote a provisional employee.

Temporary Military Leave -- Ordered military leave of not more than 180 calendar days, including travel time.

Test Hands -- Employees whose work is timed for the purpose of establishing job standards and rates.

Time Work -- Work where wages are based on the length of time it takes to do a task not by piece work.

Termination -- The ending of an incumbent's assignment in a specific class without ending of his continuing status in another class.

Trainee -- Worker undergoing training preliminary to full assignment to a job for which he is being trained.

Transfer -- The reassignment of an employee without examination from one position to a position in a related class with the same salary schedule or hourly rate.

Unclassified Service -- Part-time playground positions, full-time day students employed part-time, apprentices, Title VI CETA positions limited to not more than one year in duration, and professional experts and community representatives employed in consulting or advisory capacities on a temporary basis for a specific project.

Unsatisfactory Service -- The performance of assigned duties in a manner which is detrimental to the good of the service or the failure to perform them, or the performance of actions while on duty which are detrimental to the good of the service.

Vacations -- Authorized annual leaves with or without pay during time away from the place of employment.

Veterans' Credit -- Five or ten additional points, added to a passing score in open examinations, for military or related service rendered during the time of war or national emergency.

Wage Brackets-- Minimum and maximum rates of pay for each job classification.

Wage Differentials -- Different rates of pay for the same general type of work, variations resulting from differences in types of employees, performance standards and conditions under which the tasks must be accomplished.

Wage Rate -- Established rate of regular pay for a job.

Waiver -- The voluntary relinquishment by an eligible of a right to be considered for appointment from an employment list in one or more positions, locations, or for a specific or unlimited period of time.

Welfare Plan -- Health and insurance plans and other types of employee benefit plans. The Welfare and Pension Plans Disclosure Act (1958) specifically defines welfare plans for purposes of compliance, but the term is used loosely in employee relations.

Withholding -- Deductions of an employee's income taxes by the employer who pays the income to the employee.

Workday -- That part of a 24-hour period during which an employee receives compensation, regardless of the number of hours in a day for which compensation is received, with the following exceptions: 1) A work shift that begins in one day and ends in the succeeding day shall be considered one working day; and 2) A calendar day for which only overtime compensation is received shall not be considered a working day.

Workweek -- Forty hours, usually served in five consecutive days within a seven-day cycle, is the regular workweek for the majority of classified employees.

# REFERENCES

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## INTRODUCTION

1. Heddinger, F. Editorial in Journal of Collective Bargaining in the Public Sector, (Baywood Publishing Co.), 1974, Vol. 3, No. 1) p. 4.

## Chapter 1:

## Chapter 1:

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## Chapter 4:

*The material in this chapter is reprinted from American School and University magazine, with the permission of North American Publishing Company.

## Chapter 6:

1. Corwin, Ronald G. "The Organizational Context of School Board-Teacher Conflict," Understanding School Boards, Peter J. Cistone (ed.), (Toronto: D.C. Heath and Company, 1975), pp. 131-158; and Salinger, A.D. and K. Goldhammer,"The Roots of Teacher Militancy," School Boards and the Political Fact, P.J. Cistone (ed.), (Toronto: O.I.S.E., 1972), pp.45-52.

2. The Report of the Committee of Inquiry, June 1972: Professional Consultation and the Determination of Compensation for Ontario Teachers, p.62.

3. Ibid., p.55.

4. Presthus, Robert, Elite Accommodation in Canadian Politics, (Toronto: McGraw Hill Ryerson Ltd., 1975), p.2.

5. Bently, in Presthus, Ibid.

6. Latham, Earl. The Group Basis of Politics, (Ithaca: Cornell University Press, 1952), p.12.

7. Pross, A. Paul (ed.). Pressure Group Behavior in Canadian Politics, (Toronto: McGraw Hill Ryerson Ltd., 1975), p.2.

8. Presthus, op. cit., p.64.

9. Presthus, op. cit., p.65.

10. Zeigler, Harmon. Interest Groups in American History, (New Jersey: Prentice-Hall, 1964), p.40.

11. Crick, Bernard. In Defence of Politics, (London: Penguin Books, 1964), p.40.

12. Zeigler, Harmon, Jennings, M. Kent, Peak, G. Wayne. Governing American Schools, (North Scituate Mass.: Duxbury Press, 1974), p.6.

13. Robert Dahl, Modern Political Analysis (Englewood Cliffs, New Jersey: Prentice-Hall Inc., 1963), p.77.

14. Zeigler, op. cit., p.40.

15. Pross, op. cit., p.7.

16. Ralph Ross and Ernest Van Den Haag, The Fabric of Society, (New York Harcourt, Brace & Co., 1957), p.631.

17. Zeigler et al, op. cit., p.xii.

18. C. H. Wilson, Essays in Local Government, (Oxford: Blackwell's, 1948), p.31.

19. Fred Heddinger, Editorial in Journal of Collective Bargaining in the Public Sector, (Baywood Publishing Co., 1974, Vol. 3, No. 1), p.4.

## Chapter 8:

1. Slicter, Sumner H., Healy, James J., Livernash, Robert E. The Impact of Collective Bargaining on Management, The Brookings Institution, (Washington, DC, 1960).

2. Lockhart, T. C."How One Company Prepares for Collective Bargaining," Personnel, (July, 1965) p.72.

3. Chester L. Karass, The Negotiating Game, (World Publishing Co., NY, 1970) p.36.

4. Ibid., pp.82-83.

5. Ibid., p. 128.

6. Montagu, Ashley. Man in Process, (New American Library, NY, 1962), p.50.

7. Argyris, Chris. Interpersonal Competence and Organizational Effectiveness, Dorsey Press, Homewood, IL, 1962, p.5.

8. Slater, Phily, Bennis, Warren. "Democracy is Inevitable," Harvard Business Review, (March-April 1964) p.51.

9. McGregory Douglas. "The Human Side of Enterprise," The Management Review, Vo. 46, 1957, pp.22-28 and 88-92.

10. Maslow, A. H. "A Dynamic Theory of Human Motivation," in Understanding Human Motivation, Ed's Chalmers L. Stacey and M. F. DeMartin, World Publishing Co., 1965, pp.84-109.

11. Nierenberg, Gerard I. Creative Business Negotiating: Skills and Successful Strategies, Hawthorn Books, Inc., New York, 1971, pp.24-33.

12. "H. A. Murray's List of 'Needs'," in M. D. Vernon, Human Motivation, Cambridge University Press, Cambridge, 1969, p.100.

13. Bennis, Warren G. "A Funny Thing Happened on the Way to the Future," in Psychology and the Problems of Society, ed's. Frances F. Korten, Stuart W. Cook and John J. Lacey, American Psychological Assn., 1970, p.436.

14. Warner, Kenneth C. and Hennessy, Mary L. Public Management at the Bargaining Table, Public Personnel Ass., (Chicago, 1967), pp.306-308.

15. Warner, op. cit., p.308.

16. Deutsch, Morton. The Resolution of Conflict: Constructive and Destructive Processes. (Yale University Press, New Haven and London, 1973) pp. 380-381.

17. Deutsch, op. cit., pp.380-381.

18. Homans, George. The Human Group, conclusions in Human Relations in Management, U.S. Air Force Academy Cadet Notebook, Department of Behavioral Science, (Beh. Sci. 302), 5th Ed., 1964, p.48.

19. Homans, op. cit., p.48.

20. Dougherty, John J. "The Two Worlds of the Technologist," I.E.E.E. Transactions on Engineering Management, Volume EM-15, #1, March, 1968, p.14.

### Chapter 9:

*This material is reprinted from American School and University magazine, with the permission of North American Publishing Company.

### Chapter 14:

1. Much of the material included in this portion of the chapter was extrapolated from Merit Pay for Teachers edited by Glen Robinson, (Arlington, Virginia: Educational Research Services, Inc., 1979) pp.1-29.

2. Templeton, Ian. Merit Pay. Eugene, Oregon: Educational Management Review Series Number 10, ERIC Clearinghouse on Educational Management, University of Oregon, (November, 1972), p.1.

3. "Merit Pay: What Merit?" Washington, DC: NEA, (October 16, 1968), p.3.

4. Davis, Hazel. "Where We Stand on Merit Rating as Applied to Teacher Salaries", NEA Journal, 46 (November, 1957), p.535.

5. "Facts and Issues in Merit Salary Schedules", The Journal of Teacher Education, 8 (June, 1957), p.127.

6. Merit Pay In California School Districts, 1965-1966. Burlingame, California: California Teachers Association, Research Bulletin 194, (February, 1966), p.1.

7. Merit Rating. Trenton, New Jersey: New Jersey Education Association, Research Division, Research Bulletin No. 63-1 (April, 1963), p.6.

8. Davis, op, cit., "Facts and Issues in Merit Salary Schedules", p. 129. Merit Provisions in Teachers' Salary Schedules, 1972-73. Washington, DC: NEA, Research Memo 1973-2 (January, 1973). p.1.

9. Davis, op. cit., "Where We Stand on Merit Rating as Applied to Teachers' Salaries", pp. 535-536.

10. Stoops, Emery, et.al. Handbook of Educational Administration: A Guide for the Practitioner, (Boston: Allyn and Bacon, Inc., 1975) p.632.

11. Bhaerman, Robert D. "Merit Pay? No!" National Elementary Principal, 52 (February, 1973), pp.63-69.

12. Flippo, Edwin and Gary M. Munsinger. Management. 3rd ed., (Boston: Allyn and Bacon, Inc., 1975) p.341.

13. This material extrapolated from Merit Salary Program for Teachers. San Diego, California: San Diego City Schools, Department of Research (September 15, 1953), pp.4-6.

    Merit Rating: Facts and Issues, (St. Paul, Minnesota: Minnesota Education Association (April, 1958), pp.13-14. Merit Pay: Report of the Merit Pay Study Committee, (Des Moines, Iowa: Iowa State Education Association, 1970) p.2.

14. Ibid.

15. Tiechti, Carroll. 1971-72 Survey of Merit Pay Plans in Public Schools Systems, (Wichita, Kansas: Wichita Public Schools, March, 1972), p.27.

16. Rhodes, Eric. "Merit Pay--Where We Stand", in Evaluation and Merit Pay Clinics, (Albany, New York: New York State School Boards Association, 1973) pp.3-4.

17. Rometo, Arthur. "Attitudes of Teachers, Administrators and School Directors of Pennsylvania Toward Merit Rating." Ed.D dissertation, (University of Pittsburgh, 1961) 211pp.

18. Reiels, James. "Teachers' Opinions Regarding Merit Rating as Related to Certain Personal and Situational Factors." Ph.D. dissertation, (The University of Wisconsin, 1961) 247pp.

19. Michael, Calvin. "Teachers' Attitudes Toward Merit Rating as a Function of Conflict of Interest", The Journal of Teacher Education, 15 (June, 1964), pp.210-218.

20. For detailed analysis of these dimensions see Bales, Robert. "Task Roles and Social Roles in Problem-Solving Groups", in Readings in Social Psychology, E. Maccoby, T.M. Newcomb and E.L. Hartley (eds.) (Holt, Rinehart, and Winston, 1958).

21. Halpin, Andrew. The Leadership Behavior of School Superintendents. (Chicago: Midwest Administration Center, The University of Chicago, 1959).

22. Korman, A.K. "'Consideration', 'Initiating Structure' and Organizational Criteria -- A Review", Personnel Psychology: A Journal of Applied Research, 19, No. 4 (Winter, 1966), pp.349-361.

23. Fiedler, Fred. A Theory of Leadership Effectiveness, (New York: McGraw Hill Publishing Company, 1967).

24. Ignster, Bernard. "Why Executive Educators should Be Paid on the Basis of Job Content - Not in Relation to Teacher Wages." The Executive Educator, (October, 1978), p.25.

25. An "open-looped" system is defined as one in which administrators do not have precise, measurable goals. In such a system energy is directed into the system without any observable means of determining whether the efforts are on or off target - effective or ineffective.

26. In a "closed-looped" system, specific and precise objectives are stated. Such marks are established so that progress can be measured and vehicles are created that feed data back into the system for use in decision-making.

27. McGraw, Jean. "Management by Objectives: Accountability by Contract", in Information Package, Management by Objectives in the Madison Public Schools (Madison, Wisconsin: Madison Public Schools, 1972).

28. The two approaches described were extrapolated from The School Administrator and Negotiation, (eds.) George Redfern and Forrest Commes (Washington, DC: AASA) pp.29-31.

# BIBLIOGRAPHIES

# BIBLIOGRAPHY OF MATERIALS RELATED TO
# COLLECTIVE BARGAINING IN THE PUBLIC SECTOR

I. Periodicals
II. Books, Dissertations, Monographs
III. Resources and Organizations

Compiled by Dr. Lewis T. Kohler and Dr. John L. Grogan

## I. BIBLIOGRAPHY OF PERIODICALS

Aaron, Benjamin. "How Other Nations Deal with Emergency Disputes." *Monthly Labor Review*, Vol. 95, No. 5, May, 1972, pp. 37-43.

Abbott, William L. "The Public Worker Transforms Labor." *The Nation*, Vol. 212, No. 21, May 24, 1971, pp. 648-652.

Adler, Joseph. "Impact of Civil Service on Managerial Promotion." *An Occasional Paper of Cornell University*, Number 5, July, 1974.

Akehurst, Alan W. "The Role of the Shop Steward." *Civil Service Review Canada*, Vol. 43, No. 1, March, 1970, pp. 52-57.

"Collective Bargaining and Rights Protection in the British Civil Service." *Civil Service Review (Canada)*, Vol. 46, No. 2, June, 1973, pp. 30-41, 43.

Alpert, Leonard. "Patterns of Unit Determination in California." *Public Personal Review*, Vol. 33, No. 2, April, 1972, pp. 128-132.

Anderson, Arvid. "Collective Bargaining in Municipal and State Sectors; Some Lessons and Guidelines." *Good Government*, Vol. 87, No. 2, Summer 1971, pp. 1-5.

"Public Employee Bargaining: The Changing of the Establishment." *Wake Forest Law Review*, Vol. 7, No. 2, March, 1971, pp. 175-188.

"The Changing of the Establishment." *Wisconsin Bar Bulletin*, Vol. 43, No. 5, October, 1970, pp. 33-35, 38-45.

Anderson, Howard J. "The Role of the Neutral in Public Employee Disputes." *Washington: Bureau of National Affairs, Inc.*, 1972.

Anthony, Philip and William P. Anthony. "Try a Problem-Solving Approach to Grievance Handling." *Supervisory Management*, Vol. 16, No. 10, October, 1971, pp. 22-26.

Atwood, Jay F. "Collective Bargaining's Challenge: Five Imperatives for Public Managers." *Public Personnel Management*, Vol. 5, No. 1, January-February, 1976, pp. 24-32.

Baird, Richard S. "Participative Management Training at the Navy Finance Center, Cleveland." *Journal of Navy Civilian Manpower Management*, Vol. 6, No. 1, Spring-Summer, 1972, pp. 5-7.

Bales, Waldo F. "Public Employee Labor Relations." *The Urban Lawyer*, Vol. 10, No. 3, June, 1978, pp. 504-507.

Banner, David K. "Decentralized Management: Why It Might Not Work." *Canadian Personnel and Industrial Relations Journal*, Vol. 20, No. 3, pp. 34-36.

Baird, James R. "Labor Relations Policy for Public Employees; a Legal Perspective." Georgia Law Review, Vol. 4, No. 1, Fall, 1969, pp. 110-133.

Bennett, George. "A Design for Labor Peace." Labor Law Journal, Vol. 24, No. 10, October, 1973, pp. 692-699.

"Tools to Resolve Labor Disputes in the Public Sector." Personnel, Vol. 50, No. 2, March-April, 1973, pp. 40-47.

Bernstein, Merton C. "Alternatives to the Strike in Public Labor Relations." Harvard Law Review, Vol. 85, No. 2, December, 1971, pp. 459-475.

Berrodin, Eugene F. "How to Prepare for Collective Negotiations." LMRS Newsletter (Labor-Management Relations Service), Vol. 1, No. 3, June, 1970, pp. 2-3.

Biesen, Chester. "The ABC's of Collective Bargaining." Seattle: Association of Washington Cities, 1968.

Blair, Patricia N. "State Legislative Control Over the Conditions of Public Employment: Defining the Scope of Collective Bargaining for State and Municipal Employees." Vanderbilt Law Review, Vol. 26, No. 1, January, 1973, pp. 1-21.

Burton, John E., Jr. and Charles Krider. "The Role and Consequences of Strike by Public Employees." Yale Law Journal, Vol. 79, No. 3, January, 1970, pp. 418-440.

Butz, John R. "New Look in Training for Participative Management." Journal of Navy Civilian Manpower Management, Vol. 4, No. 1, Spring, 1970, pp. 25-26.

Calabrese, James A. "The Patco Dispute--A Need for Change in Public Employee Labor Settlements." DePaul Law Review, Vol. 20, No. 3, Winter, 1970, pp. 699-728.

Cameron, George D., III. "The Council Approach to Collective Bargaining: A Report on 3 Real World Precedents." Human Resource Management, Vol. 11, No. 2, Summer, 1972, pp. 27-34.

Chaney, Frederick B. and Kenneth S. Teel. "Participative Management--A Practical Experience." Personnel, Vol. 49, No. 6, November-December, 1972, pp. 8-19.

Chaston, C.P. "The Right to Strike in the Public Service." Canadian Personnel and Industrial Relations Journal, Vol. 19, No. 3, May, 1972, pp. 12-14.

Christrup, Helen J. "Why Do Government Employees Join Unions." Personnel Administration, Reprint Series, September-October, 1966.

Clark, Alfred W. and Sue McCabe. "Leadership Beliefs of Australian Managers." Journal of Applied Psychology, Vol. 54, No. 1, part 1, February, 1970, pp. 1-6.

Clark, R. Theodore, Jr. "Public Employee Strikes: Some Proposed Solutions." Labor Law Journal, Vol. 23, No. 2, February, 1972, pp. 111-120.

Collins, A. D. "Management By Involvement." Canadian Personnel and Industrial Relations Journal, Vol. 17, No. 3, May, 1970, pp. 26-28.

Cortright, David. "Unions and Democracy." A. E. I. Defense Review of American Enterprize Institute for Public Policy Research, No. 1, February, 1977.

Coulson, Herbert H. "The Professional Worker and Collective Bargaining." Civil Service Review (Canada), Vol. 41, No. 4, December, 1968, pp. 39-42, 48.

Coulson, Robert. "Arbitration and Its Use in Public Sector." CPER, Vol. 32, March, 1977, pp. 30-35.

"The Public Employee and Arbitration." Journal of Collective Negotiations in the Public Sector, Vol. 2, No. 1, Winter, 1973, pp. 5-12.

Craft, James A. "Notes on the Administration of Collective Bargaining Agreements." Personnel Administration and Public Personnel Review, Vol. 1, July-August, 1972, pp. 30-32.

Currier, Richard J. "A Case Study: Sixteen Public School Job Actions and the Use of Impasse Procedures." C.P.E.R., Vol. 33, June, 1977, pp. 16-20.

Denhart, Robert B. "Alienation and the Challenge of Participation." Personnel Administration, Vol. 34, No. 5, September-October, 1971, pp. 25-32.

Derber, Milton and Jan McAndrews. "Collective Bargaining Employee Relations Without Adequate Legislative Safeguards." Personnel Administration and Public Personnel Review, Vol. 1, No. 3, November-December, 1972, pp. 31-41.

DiPasquale, Attilio. "The Arbitration Complex." Civilian Manpower Management, Vol. 9, No. 2, Summer, 1975.

"Who is This Negotiator?" Journal of Navy Manpower Development, Vol. 5, No. 4, Winter, 1971, pp. 14-15.

Doherty, Robert E. "Public Sector Bargaining: Can Fair Treatment be Reconciled With Efficiency and Accountability?" An Occasional Paper of Cornell University, No. 9, September, 1974.

Dolnick, David. "The Settlement of Grievances and The 'Job Conscious' Theory." Labor Law Journal, Vol. 21, No. 4, April, 1970, pp. 240-247.

Feigenbaum, Charles. "Civil Service and Collective Bargaining: Conflict or Compatability." Public Personnel Management, Vol. 3, No. 3, May-June, 1973, pp. 224-252.

Ferris, Francis D. "Contract Interpretation: A Bread and Butter Talent." Public Personnel Management, Vol. 4, No. 4, July-August, 1975, pp. 223-230.

Field, Rodger C. "Public Employees' Right To Pre-Termination Hearing Under the Due Process Clause." Indiana Law Journal, Vol. 48, No. 1, Fall, 1972, pp. 127-137.

Finkelman, Jacob. "Some Aspects of Public Service Bargaining in Canada." Civil Service Review (Canada), Vol. 43, No. 1, March, 1970, pp. 18-29.

"The Scope of Bargaining in Canadian Public Service Labor Relations Legislation." Civil Service Review (Canada), Vol. 44, No. 3, September, 1971, pp. 18-25, 27-30.

Foegen, J. H. "Attenuated Strikes." Management of Personnel Quarterly, Vol. 10, No. 3, Fall, 1971, pp. 10-14.

"If Everybody Strikes, Will The Band Wagon Stop?" Business Horizons, Vol. 14, No. 6, December, 1971, pp. 17-20, 22.

"Mediation From Initiation: Hope for Public Labor Relations." Public Personnel Review, Vol. 31, No. 1, January, 1970, pp. 7-12.

Frederickson, H. George. "Role Occupancy and Attitudes Toward Labor Relations in Government." Administrative Science Quarterly, Vol. 14, No. 4, December, 1969, pp. 595-606.

Garbarino, Joseph W. "Various Patterns of Faculty Bargaining in Other States." Industrial Relations, Vol. 15, May, 1976, pp. 191-205.

Getman, Robert. "Labor Arbitration and Dispute Resolution." The Yale Law Review, Vol. 88, No. 5, April, 1979, pp. 916-949.

Goldenberg, H. Carl. "Human Factors in Labor Relations." Civil Service Review (Canada), Vol. 45, No. 1, March, 1972, pp. 36-41, 43.

Grodin, Joseph R. "Public Employee Bargaining in California: The Meyers-Brown Act in the Courts." California Public Employee Relations, No. 12, March, 1972, pp. 2-24.

"Either-Or Arbitration for Public Employee Disputes." Industrial Relations, Vol. 11, No. 2, May, 1972, pp. 260-266.

Gunderson, B. N. "Action on Unfair Dismissals." Victoria University of Wellington Law Review (New Zealand), Vol. 6, No. 1, February, 1971, pp. 53-68.

Gunther, K. "Special Complaint Procedures Concerning Discrimination in Employment." International Labor Review, Vol. 104, No. 5, November, 1971, pp. 351-365.

Hayford, Stephen L. and Peter A. Veglohn. "A Questionable Public Sector Bargaining Strategy: Anxiety Arousal." Public Personnel Management, Vol. 4, No. 4, July-August, 1975, pp. 238-243.

Herman, Joseph. "Strikes by Public Employees: the Search for 'Right Principles'." Chicago Bar Record, Vol. 53, No. 2, November, 1971, pp. 57-67.

Holley, William H. Jr. "Performance Appraisal in Public Sector Arbitration." Public Personnel Management, Vol. 7, No. 1, January-February, 1978, pp. 1-5.

Houseman, K. A. "Compulsory Arbitration in the Public Sector: Constitutionality and Enforcement Issues." Public Personnel Management, Vol. 2, No. 3, May-June, 1973, pp. 194-199.

Hustad, Fred. "The Legal Conflict Between Civil Service and Collective Bargaining in Michigan." Public Personnel Review, Vol. 31, No. 4, October, 1970, pp. 269-272.

Jackson, James J. "Public Employer Counteractions to Union Concerted Activities: An Analysis of Alternatives." Journal of Law and Education, Vol. 8, No. 1, January, 1979, pp. 73-98.

Jascourt, Hugh D. "Is Banning Public Employee Strikes a Legal Boomerang?" Journal of Law and Education, Vol. 8, No. 1, January, 1979, pp. 57-71.

Karper, Mark D. and Daniel J. Meckstroth. "The Impact of Unionization on Public Sector Wage Rates." Public Personnel Management, Vol. 5, No. 4, September-October, 1976, pp. 343-346.

Kieta, Joseph E. "The Strike and Its Alternatives in Public Employment." Public Personnel Review, Vol. 31, No. 4, October, 1970, pp. 226-230.

Kranz, Harry. "Must the Federal Government Step In?" Good Government, Vol. 88, No. 3, Fall, 1971, pp. 20-23.

Laberge, Edouard P. "Collective Bargaining In The Public Service of Canada." International Review of Administrative Science, Vol. 36, No. 3, 1970, pp. 227-233.

Lev, Edward R. "Strikes By Government Employees: Problems and Solutions." American Bar Association Journal, Vol. 57, August, 1971, pp. 771-777.

Liebowitz, Jonathan S. "Public Sector Mediation: Some Observations On Technique." Journal of Collective Negotiations In The Public Sector, Vol. 1, No. 1, February, 1972, pp. 91-95.

Loevi, Francis J., Jr. "The Problem of Unnecessary Legislative Contract Rejections In Public Employment: An Alternative System For Ratification." Public Personnel Review, Vol. 31, No. 2, April, 1970, pp. 118-122.

Levine, Marvin J. and Joy J. Luna. "A Comparison of Impasse Procedures in Public and Private Sectors: The Hawaii State Teachers' Experience." Public Personnel Management, Vol. 7, No. 2, March-April, 1978, pp. 108-118.

Loewenberg, Joseph J. "The effect of Compulsory Arbitration on Collective Negotiations." Journal of Collective Negotiations in the Public Sector, Vol. 1, No. 2, May, 1972, pp. 177-190.

Losey, Michael R. "Go After Employee Complaints." Supervisory Management, Vol. 16, No. 8, August, 1971, pp. 2-6.

Madden, John V. "To Strike or Not to Strike: Does the Government Already Have an Alternative?" Labor Law Journal, Vol. 21, No. 5, May, 1970.

Masters, W. Frank. "Arbitrability in the Public Schools: A Study of Arbitrators and Arbitrability in Michigan Teacher-School Board Disputes." 1967-1971,. An Occasional Paper of Cornell University, No. 2, April, 1973.

McCarthy, Charles F. "Collective Bargaining and the Local Chief Executive." Public Personnel Review, Vol. 31, No. 3, July, 1970, pp. 157-161.

Miller, Glenn W. "Public Employees and Their Attitudes Toward Their Jobs." Public Personnel Review, Vol. 33, No. 2, April, 1972, pp. 82-86.

Miller, Ronald C. "Grievance Procedures for Non-Union Employees." Public Personnel Management, Vol. 7, No. 5, September-October, 1978, pp. 302-311.

Nassau, Stephen M. "The Role of Negotiations in the Equation 'Declining School Enrollment': A Union Perspective." Journal of Law and Education, Vol. 7, No. 2, April, 1978, pp. 265-278.

Nigro, Felix A. "Personnel Administration By Handshake." Civil Service Journal, Vol. 12, No. 4, April-June, 1972, pp. 28-30.

Northrup, David E. "Management's Costs in Public Sector Collective Bargaining." Public Personnel Management, Vol. 5, No. 5, September-October, 1976, pp. 328-334.

Odewahn, Charles A. "The Mediator in the Public Sector -- A New Breed?" Labor Law Journal, Vol. 23, No. 10, October, 1972, pp. 643-648.

Osterman, Melvin H. "Productivity Bargaining in New York -- What Went Wrong?" An Occasional Paper of Cornell University, No. 8, April, 1975.

Overton, Craig E. and Max S. Wortman, Jr. "Proposals and Counterproposals in Public Sector Collective Bargaining." Journal of Collective Negotiations in the Public Sector, Vol. 2, No. 2, Spring, 1973, pp. 125-134.

Parekh, Navin. "Collective Bargaining Legislation in the Federal Public Service." Civil Service Review (Canada), Vol. 44, No. 2, June, 1971, pp. 2-7, 28-29, 42.

Patterson, Lee T. and James C. Romo. "Teacher Salary Increments: The Problem of Good Faith Bargaining." CPER, Vol. 37, June, 1978, pp. 21-27.

Patten, Thomas H., Jr. "Collective Bargaining and Consensus: the Potential of a Laboratory Training Input." Management of Personnel Quarterly, Vol. 16, No. 1, Spring, 1970, pp. 29-36.

Perigoe, J. R. "Does Final Offer Selection Offer a Strike Alternative." Canadian Personnel and Industrial Relations Journal, Vol. 20, No. 1, January, 1973, pp. 30-31.

Peter, J. F. "European Company Law: Issues and Debates." Personnel Management (Gt. Brit.), Vol. 5, No. 6, June, 1973, pp. 26-29.

Peterson, Donald J. "Grass Roots Problem Solving." Personnel Administration, Vol. 35, No. 3, June, 1972, pp. 20-23.

Pfefferkorn, William G. "Professional Negotiations in North Carolina: an Alternative to Formal Collective Bargaining for Public Employees." Wake Forest Law Review, Vol. 7, No. 2, March, 1971.

Polelle, Michael J. "Collective Bargaining and the Public Employee: Coherence or Chaos?" North Dakota Law Review, Vol. 48, No. 1, Fall, 1971, pp. 41-58.

Powell, Reed M. and John L. Schlacter. "Participative Management - A Panacea." Academy of Management Journal, Vol. 14, No. 2, June, 1971, pp. 165-173.

Prevo, Randall M. "The Choice -- Public Employee Unions or Associations." American County, Vol. 3, No. 6, June 1970, p. 31.

Rains, Harry H. "Collective Bargaining in the Public Sector and the Need for Exclusion of Supervisory Personnel." Labor Law Journal, Vol. 23, No 5, May, 1972, pp. 275-288.

Rehmus, Charles M. "Fact Finding and The Public Interest." An Occasional Paper of Cornell University, No. 4, January, 1974.

Roach, John M. Worker Participation: New Voices in Management, New York: The Conference Board, 1973.

Roberts, Karlene H. and Charles C. Snow (editors). "A Symposium: Cross-National Organization Research." Industrial Relations, Vol. 12, No. 2, May, 1973, pp. 137-247.

Ronayne, John A. "Public Employment Relations." Tennessee Law Review, Vol. 36, No. 3, Spring, 1969, pp. 491-513.

Rosen, Harold S. and Edward Reith. "A Report and Commentary on Unit Determination." California Public Employee Relations, No. 13, June, 1972, pp. 2-6.

Ross, Jerome H. "Federal Mediation in the Public Sector." Monthly Labor Review, February, 1976.

Roukis, George S. "Public Employment Relations Revisited: a Fact Finder's Recommendations for Improving the Collective Negotiating Process." Journal of Collective Negotiations in the Public Sector, Vol. 1, No. 1, February, 1972, pp. 75-82.

Rubenstein, Harvey B. "The Merit System and Collective Bargaining in Delaware." Labor Law Journal, Vol. 20, No. 3, March, 1969, pp. 161-163.

Rubenstein, Sidney P. "Participative Problem Solving." Manage, Vol. 24, No. 5, March-April, 1972, pp. 6-11.

Shapiro, Sumner. "Faculties in Ferment." Good Government, Vol. 87, No 2, Summer, 1971, pp. 10-16.

Shaw, Lee C. and R. Theodore Clark, Jr. "The Practical Differences Between Public and Private Sector Collective Bargaining." UCLA Law Review, Vol. 19, No. 6, August, 1972, pp. 867-886.

Siegel, Alan L. and Robert A. Ruh. "Job Involvement, Participation in Decision Making, Personal Background and Job Behavior." Organizational Behavior and Human Performance, Vol. 9, No. 2, April, 1973, pp. 318-327.

Silberger, Sara L. "The Missing Public: Collective Bargaining in Public Employment." Public Personnel Management, Vol. 4, No. 5, September-October, 1975, pp. 290-299.

Sinicropi, Anthony V. and Thomas P. Gilroy. "The Legal Framework of Public Sector Dispute Resolution." Arbitration Journal, Vol. 28, No. 1, March, 1973, pp. 1-13.

Smith, David R. "The Agency Shop: An Old Issue In A New Environment." California Public Employee Relations, No. 17, June, 1973, pp. 2-12.

Smyser, Marion R. "Public Employees and Public Employees Unions: Their Rights and Limitations in South Dakota." South Dakota Law Review, Vol. 17, Winter, 1972, pp. 65-97.

Sorcher, Melvin. "Motivation, Participation and Myth." Personnel Administration, Vol. 34, No. 5, September-October, 1971, pp. 20-24.

Spenla, William A., Gerry M. Whalen and Cathleen Otto. "The Role of Negotiations in the Equation 'Decling School Enrollments': A Management Perspective." Journal of Law and Education, Vol. 17, No. 2, April, 1978, pp. 243-263.

Stanley, Preston C. "Cost Determination in Federal Collective Bargaining." Public Personnel Management, Vol. 5, No. 5, September-October, 1978, pp. 335-342.

Sachman, Morris. "Make Your Own Simulations To Train Public Managers in Collective Bargaining." Public Personnel Management, Vol. 4, No. 4, July-August, 1975, pp. 231-237.

Sandell, Roland M. "Ten Commandments of Successful Union Grievance Negotiation." Supervision, Vol. 33, No. 6, June, 1971, pp. 3-4.

Schmidman, John. "The Unit Appropriate For Bargaining: 'The Pennsylvania Experience'." Journal of Collective Negotiations In The Public Sector, Vol. 1, No. 4, November, 1972, pp. 353-362.

Seidman, Joel. "Bargaining Structure: Some Problems of Complexity and Dislocation." Labor Law Journal, Vol. 24, No. 6, June, 1973, pp. 340-350.

"State Legislation on Collective Bargaining by Public Employees." Labor Law Journal, Vol. 22, No. 1, January, 1971, pp. 13-22.

Seidman, Joel and Paul D. Staudohar. "The Hawaii Public Employment Relations Act: A Critical Analysis." Industrial and Labor Relations Review, Vol. 26, No. 3, April, 1973, pp. 919-937.

Seinsheimer, Walter G. "What's So Terrible About Compulsory Arbitration?" Arbitration Journal, Vol. 26, No. 4, 1971, pp. 219-225.

Shane, Joseph. "Indirect Functions of the Grievance Procedure." Public Personnel Management, Vol. 2, No. 3, May-June, 1973, pp. 171-178.

Staudohar, Paul. "A New Alternative To The Strike-Arbitration Choice." California Public Employee Relations, No. 17, June, 1973, pp. 22-31.

"Voluntary Binding Arbitration in Public Employment." Arbitration Journal, Vol. 25, No. 1, 1970, pp. 30-39.

"Public Employee Grievances and Arbitration: Some Unresolved Issues." Public Personnel Review, Vol. 33, No. 1, January, 1972, pp. 56-61.

Steinbach, Sheldon E. "Public Employee Unionization -- A Constitutionally Protected Rights?" South Dakota Law Review, Vol. 15, No. 2, Spring, 1970, pp. 258-272.

Sullivan, Daniel P. "Unfair Labor Practice Standards For Public Service Employers and Unions: An Unfulfilled Need." Washburn Law Journal, Vol, 9, Spring, 1970, pp. 412-429.

Tyler, Gus. "Why They Organize." Public Administration Review, Vol. 32, No. 2, March-April, 1972.

Usery, W. J., Jr. "Some Attempts To Reduce Arbitration Costs and Delays." Monthly Labor Review, Vol. 95, No. 11, November, 1972, pp. 3-6.

Van de Water, John. "A Positive Approach To Public Employee Relations." Personnel Administrator, Vol. 16, No. 5, September-October, 1971, pp. 20-23.

Waks, Jay W. "The Privilege of Exclusive Recognition and Minority Union Rights In Public Employment." Cornell Law Review, Vol. 55, No. 6, July, 1970, pp. 1004-1032.

Way, Max. "More Power To Everybody." Fortune, Vol 81, No. 5, May, 1970, pp. 173-175, 290, 292.

Wellington, Harry H. and Ralph K. Winter, Jr. "Structuring Collective Bargaining In Public Employment." Yale Law Journal, Vol. 79, No. 5, April, 1970, pp. 805-870.

White, Terrence H. "Worker's Attitudes About Industrial Democracy." Canadian Personnel and Industrial Relations Journal, Vol. 19, No. 4, September, 1972, pp. 39-42.

Williams, William J. "The Public Service Collective Bargaining Process: Toward a New Technique." Personnel Administration and Public Personnel Review, Vol. 1, No. 1, July-August, 1972, pp. 34-37.

Witney, Fred. "Final - Offer Arbitration: The Indianapolis Experience." Monthly Labor Review, Vol. 96, No. 5, May, 1973, pp. 20-25.

---

Whorowski, A. K. "Once You Have An Agreement -- (How To Avoid Grievances)." Personnel Journal, Vol. 49, No. 10, October, 1970, pp. 843-846.

Word, William R. "Factfinding In Public Employee Negotiations." Monthly Labor Review, Vol. 95, No. 2, February, 1972, pp. 60-64.

"Towards More Negotiations in the Public Sector." Public Personnel Management, Vol. 2, No. 5, September-October, 1973, pp. 345-350.

Yaffee, Byron. "Political Activities of New York State Public Sector Employee and Employer Interest Groups." Journal of Collective Negotiations in the Public Sector, Vol. 2, No. 3, Summer, 1973, pp. 317-331.

Zeidler, Frank P. "An Overview of Labor-Management Relations in the Public Services." Public Personnel Review, Vol. 33, No. 1, January, 1972, pp. 2-5.

## II. BOOKS, DISSERTATIONS, AND MONOGRAPHS

Aaron, Benjamin and Others. *Final Report of the Assembly Advisory Council on Public Employees Relations: Report and Proposed Statute*. Sacramento: The State Assembly of California, March, 1973.

Aboud, Grace Sterrett and Robert E. Doherty. *Practices and Procedures Under the Taylor Laws: A Practical Guide in Narrative Form*. Ithaca: Cornell University, 1974.

Alpay, Guven. *An Attitudinal and Procedural Analysis of Disputes in Public Service.* USC Doctoral Dissertation. Ann Arbor: University Microfilm, 1972.

Anderson, Arvid and Hugh D. Jascourt (editors). *Trends in Public Sector Labor Relations: An Information and Reference Guide for the Future*. Chicago: Personnel Management Association, 1975.

Argyris, C. *Interpersonal Competence and Organizational Effectiveness*. Homewood, Illinois: Dorsey Press, 1962.

Baer, Walter E. *Grievance Handling: 101 Guides for Supervisors.* New York: American Management Association, 1970.

Baird, Robert N. and John H. Lendon. *The Effects of Collective Bargaining on Public School Teacher's Salaries*. Bethesda, Maryland: Case Western Reserve University, 1971.

Beal, Edwin K. *The Practice of Collective Bargaining*. Homewood, Illinois: R. D. Irwin, 1972.

Beckhard, Richard. *Organization Development: Strategies and Models.* Menlo Park, California: Addison-Wesley Publishing Co., 1969.

Begin, James P. *Collective Bargaining Agreements in New Jersey Educational Institutions.* New Brunswick: Rutgers University, 1970.

Belchers, A. Lee and Others. *Grievance and Arbitration.* Washington, DC: College and University Personnel Association, 1971.

Bennis, Warren G. *Personal and Organizational Change Through Group Methods*. New York: John Wiley and Sons, Inc., 1965.

"A Funny Thing Happened on the Way to the Future," in *Psychology and the Problems of Society*, ed's. Frances F. Korten, Stuart W. Cook and John J. Lacey, American Psychological Assn., 1970.

*Organization Development: Its Nature, Origins, and Prospectives.* Menlo Park, California: Addison-Wesley Publishing Co., 1969.

*Changing Organizations.* New York: McGraw Hill Book Co., Inc., 1966.

Bernard, Chester J. The Functions of the Executive. Cambridge, Massachusetts: Harvard University Press, 1962.

Organization and Management. Cambridge, Massachusetts: Harvard University Press, 1949.

Bernstein, Irving. The Lean Years. Boston, Massachusetts: Houghton Mifflin Co., 1960.

Bers, Melvin. The Status of Managerial, Supervisory and Confidential Employees in Government Relations. Albany: New York State Public Employment Relations Board, 1970.

Biles, George E. Attitudinal Patterns of Unionized Public Employees: An Empirical Study. (Ohio State University Doctoral Dissertation) Ann Arbor: University Microfilms, 1970.

Blake, R. R. and J. S. Mouton. Corporate Excellence Through Grid Organization Development. Houston: Gulf Publishing Co., 1968.

The Managerial Grid. Houston: Gulf Publishing Co., 1964.

Bureau of National Affairs. Grievance Guide. 4th Edition. Washington, DC: The Bureau, 1972.

Labor Relations Yearbook, Washington, DC: The Bureau, 1976.

New Breed at the Bargaining Table, Washington DC: The Bureau (Briefing Session Workbook), 1970.

California Educational Employee Relations Board. Annual Report to the Legislature. Sacramento: The Board, 1977.

California Office of the Legislative Analyst: Collective Bargaining in California Public Jurisdictions, Alternatives and Considerations for Implementations. Sacramento: The Legislative Analyst, 1975.

California Teachers Association. Negotiating Professional Standards. Burlin game: CTA, 1970.

Campagna, Anthony F. Organizational Due Process and the Grievance System: A Case Study. UCLA Doctoral Dissertation. Ann Arbor: University Microfilms, 1971.

Campbell, John P. and Others. Managerial Behavior, Performance, Effectiveness. New York: McGraw Hill Book Co., Inc., 1971.

Carlson, Richard J. and Thomas Sedwick. State Employee Labor Relations. Lexington: Council of State Governments, 1977.

Cecil, Phillip E. Grievance Handling by First Line Supervisors. University of Louisville Doctoral Dissertation. Ann Arbor: University Microfilms, 1970.

Chalmers, Ellis W. and Gerald W. Cormick. Racial Conflict and Negotiations: Perspectives and First Case Studies. Ann Arbor: University of Michigan and Wayne State University, 1971.

Chaney, John S. Teacher Strikes and Work Stoppages in Public Elementary and Secondary School Systems of over 10,000 Enrollment, 1966-68. (University of Texas Doctoral Dissertation) Ann Arbor: University Microfilms, 1971.

Checkering, Lawrence A. Public Employee Unions: A Study of Crisis in Public Sector Labor Relations. Lexington: Lexington Books, 1976.

City of New York. Digest of Grievance Arbitration Awards Under O.C.B., 1968-1974. New York: Office of Collective Bargaining, 1974.

Clark, Theodore R., Jr. Compulsory Arbitration in Public Employment. Chicago: Public Personnel Association, 1972.

Clarke, R. O., D. J. Fatchett and B. C. Roberts. Worker's Participation in Management in Great Britain. London: Heineman Educational Books, 1972.

Coffey, Athos and Reynolds. Behavior in Organization. 2nd Edition, Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1975.

Cole, Stephen. The Unionization of Teachers: A Case Study of the AFT. New York: Praeger, 1969.

Davey, Harold W. Comtemporary Collective Bargaining. Englewood Cliffs: Prentice-Hall, Inc., 1972.

Improving Grievance Arbitration: The Practioners Speak. Ames: University of Iowa, 1973.

Department of the Navy. The Arbitration Process. Officer of Civilian Personnel, Labor and Employee Relations Division, Washington DC: NAVSO P3089, 1969.

Deherty, Robert E. and Milton Schwebel. The Impact of Collective Negotiations on Policy Making in New Jersey Schools. New Brunswick: Rutgers University, 1972.

Derber, Milton. Collective Public Employee Relations Abroad: Some Foreign Answers to American Questions. Chicago: Public Personnel Association, 1971.

Collective Public Relations in Australia: Relevance for the United States. Chicago: Public Personnel Association, 1970.

Deutsch, Morton. The Resolution of Conflict: Constructive and Destructive Processes. Yale University Press, New Haven and London, 1973.

Dover, C. J. Management Communication on Controversial Issues. Washington, DC: The Bureau of National Affairs, Inc., 1965.

Downs, Keith. Leadership and Organization: A Behavioral Science Approach. New York: McGraw-Hill Book Co., Inc., 1961.

Drucker, Peter F. The Age of Discontinuity - Guidelines to Our Changing Society. New York: Harper and Row Publishers, 1968.

The Effective Executive. New York: Harper and Row, 1968.

Eddy, William B. and James V. Spotts. Behavioral Science Approaches to Employee Relations. Chicago: Public Personnel Association, 1970.

Etzoini, Amitai. Readings on Modern Organizations. Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1969.

A Sociological Reader on Complex Organizations. 2nd Edition. New York: Holt, Rinehart and Winston, 1969.

Fairbanks, Helen. Public Employee Strikes. Princeton: Princeton University, 1972.

Fayol, Henri. General and Industrial Management. London: Sir, Issac Pitman and Sons, Ltd., 1949.

Fibish, Nancy Connolly (Editor). The Role of Labor Relations in the Federal Sector. Washington, DC: International Personnel Management Association, 1977.

Fleischman, William E. A Case Study of Collective Bargaining for Public School Teachers in Detroit, Michigan. (University of Michigan, Doctoral Dissertation) Ann Arbor: University Microfilms, 1971.

Fletcher, James L. The Judicial and Legislative History of Public School Employee Collective Baragining in Illinois: 1921-1971. (Northwestern University Doctoral Dissertation) Ann Arbor: University Microfilms, 1971.

Flood, William J. Connecticut Labor Contract Analysis Program, Public Sector. Storrs: University of Connecticut, 1972.

Fritz, Richard J. and Conrad Kreger. Alternate Language for Public Sector Labor Contract. Chicago: Public Personnel Association, 1972.

Galbraith, John Kenneth. The New Industrial State. Boston: Houghton Mifflin Co., 1967.

Garman, Phillip L. Grievance Arbitration Manual. Champagin: University of Illinois, 1972.

Gellerman, Saul W. Motivation and Personality. New York: American Management Association, Vail-Ballou Press, 1963.

Gilroy, Thomas and Anthony V. Sincropi. Dispute Settlement in the Public Sector: The State of the Art. Washington, DC: U.S. Labor-Management Services Administration, 1972.

Granpf, Michael H. How to Cost Your Labor Contract. Washington, DC: Bureau of National Affairs, 1973.

Gregg, Perry. Case Study of the Public School Collective Negotiations Process Designed for the Use of Administrators-in-Training. (Michigan State University Doctoral Dissertation) Ann Arbor: University Microfilms, 1969.

Grogan, John L. A Critical Investigation of the Procedures Established for the Resolution of Conflict Between Pennsylvania School Boards and Professional Employees Bargaining Agents in Pennsylvania Following the Enactment of the Public Employee Relations Act of 1970. (Unpublished Doctoral Dissertation) University of Pittsburgh, 1975.

Gullett, Carlos R. The Impact of Employee Representation Plans Upon the Development of Management-Worker Relationships in the United States. (University Doctoral Dissertation, Louisiana State University) Ann Arbor: University Microfilms, 1971.

Haehn, James O. Survey of Faculty and Administrator Attitudes on Collective Bargaining. Chico: Chicago State College, 1970.

Haggland, George and Duane Thompson. Psychological Tests and Grievance Arbitration. Iowa City: University of Iowa, 1969.

Hamermesh, Daniel S. Who "Wins" in Wage Bargaining? Princeton: Princeton University, 1971.

Heisel, W. D. New Questions and Answers on Public Employee Negotiations. Chicago: International Personnel Management Association, 1973.

Helburn, J. B. Municipal Labor Relations in a Legislative Void: The Texas Case.

Public Employer-Employee Relations in Texas: Contemporary and Emerging Developments. Austin: University of Texas, 1971.

Homans, George. The Human Group, conclusions in Human Relations in Management. U.S. Air Force Academy Cadet Notebook, Department of Behavioral Science, (Beh. Sci. 302), 5th Ed., 1964.

Hunnius, Gerry, David Garson, and John Case (Editors). Worker's Control: A Reader on Labor and Social Change. New York: Vantage Books, 1973.

Institute of Industrial Relations. Equal Employment Opportunity and Affirmative Action in Public Sector Labor-Management Relations. Los Angeles: University of California, 1978.

Johnson, Dale A. and Donald J. Weiss. Middle Management Decision Making and Job Satisfaction: The Relationship Between Participation in Decision Making, Personality Characteristics, and Job Satisfaction of Building Principals. Danville: Interstate Publishers, Inc., 1971.

Johnson, Richard F., Fremont E. Kast and James Rosenzweig. The Theory and Management of Systems. New York: McGraw-Hill Book Co., Inc., 1963.

Karass, Chester L. The Negotiating Game. World Publishing Co., N.Y., 1970.

Karen, John P. A Description and Analysis of Collective Negotiations Under Provisions of the Buffalo Region of New York State (State University of New York Doctoral Dissertation) Ann Arbor: University Microfilms, 1969.

Katz, Daniel and Robert L. Kahn. The Social Psychology of Organization. New York: John Wiley and Sons, Inc., 1966.

Kentucky Legislative Research Commission. Legislative Hearing: Collective Bargaining for Public Employees. Frankfort: The Commission, 1969.

Kepner, Charles and Benjamin Tregoe. The Executive Problem Analysis and Decision Making. Princeton, New Jersey: Kepner-Tregoe, Inc., 1973.

Kerlinger, Fred M. Foundation of Behavioral Research. New York: Holt, Rinehart and Winston, 1963.

Kiesler, Charles A. and Others. Attitude Change: A Critical Analysis of Theoretical Approaches. New York: John Wiley and Sons, Inc., 1969.

Lawrence, Paul R. The Changing of Organizational Behavior Patterns. Boston: Harvard University, 1968.

Lawrence, Paul R. and J. R. Lorsch. Developing Organizations: Diagnosis and Action. Menlo Park, California: Addison-Wesley Publishing Co., 1969.

Lawshe, Ch. H. Psychology of Industrial Relations. New York: McGraw-Hill Book Co., Inc., 1953.

Leavitt, Harold J. Managerial Psychology. Chicago: University of Chicago Press, 1958.

Levine, Marvin J. Public Management Guide to Union Representation. International Personnel Management Association, 1976.

Likert, R. The Human Organization: Its Management and Values. New York: McGraw-Hill Book Co., Inc., 1967.

New Patterns of Management. New York: McGraw-Hill Book Co., Inc., 1961.

Liston, Robert A. The Limits of Defiance: Strikes, Rights and Government. New York: Franklin Watts, Inc., 1971.

Lockhart, T. C. "How One Company Prepares for Collective Bargaining." Personnel, July, 1956.

Machievelli, Niccolo. The Prince. Maryland: Penquin Books, 1966.

Maddi, Salvatore R. Personality Theories: A Comparative Analysis. Homewood, Illinois: The Dorsey Press, 1968.

Maggiols, Walter A. Techniques of Mediation in Labor Disputes. Dobbs Fury, New York: Oceana, 1977.

Maier, Norman R. F. Problem-Solving Discussions and Conferences. New York: McGraw-Hill Book Co., Inc., 1963.

Maine Office of State Employee Relations. Maine Supervisors and the New Collective Bargaining Law: A Whole New Ball Game? Augusta: The Office, 1975.

Makielski, S. J., Jr. Employee Relations in State and Local Government. Charlottesville: University of Virginia, 1971.

Mansour, Ahmed. The Legal Rights of Federal Employees to Unionize, Bargain Collectively and Strike. (Ohio State University Doctoral Dissertation) Ann Arbor: University Microfilms, 1970.

Maslow, A. J. Motivation and Personality. 2nd Edition. New York: Harper and Row Publishing Co., 1970.

Toward Psychology of Being. Princeton: D. Van Nostrand Co., 1962.

"A Dynamic Theory of Human Motivation." in Understanding Human Motivation, Ed's Chalmers L. Stacey and M. F. DeMartin, World Publishing Co., 1965.

Mayer, Raymond. Production Management. New York: McGraw-Hill Book Co., Inc., 1962.

McDonald, John R. Safety Clauses in Collective Bargaining Agreements in the Federal Service. Washington, DC: Workplace Standards Administation, U.S. Department of Labor, 1970.

McGregor, D. The Human Side of Enterprise. New York: McGraw-Hill Book Co., Inc., 1960.

Montagu, Ashley. Man in Process. New American Library, N.Y., 1962.

Murray, H. A. "List of 'Needs'." in M. D. Vernon, Human Motivation. Cambridge University Press, Cambridge, 1969.

National Education Association. Grievance Procedures for Teachers in Negotiation Agreements. Washington, DC: The Association, 1969.

Newland, Chester A. and Joseph Domitrz. Collective Bargaining and Public Administration. Chicago: Public Personnel Association, 1971.

Nierenberg, Gerald I. The Art of Negotiating. New York: Cornerstone Library, 1973.

Creative Business Negotiating: Skills and Successful Strategies. Hawthorn Books, Inc., New York, 1971.

Nierenberg, Gerald and Henry H. Calero. How to Read a Person Like a Book. New York: Pocket Books, 1975.

Oberer, Whiter E. and Others. The Taylor Act Amendments for 1969: A Primer for School Personnel. Ithaca: Cornell University, 1970.

O'Hare, J. M. Massachusetts Municipal Collective Bargaining Manual. Boston: Massachusetts Municipal Personnel Association, 1966.

Organization for Economic Co-Operation and Development. Collective Bargaining and Inflation: New Relations Between Government, Labor, and Management. Paris: Manpower and Social Affairs Directorate, 1977.

Organization of Economic Co-Operation and Development. Recent Trends in Collective Bargaining. Paris: Manpower and Social Affairs Directorate, 1972.

Parker, Willard E. and Robert W. Kleemeier. Human Relations in Supervision. New York: McGraw-Hill Book Co., Inc., 1951.

Pegnetter, Richard. Multiemployee Bargaining in the Public Sector: Purposes and Experience. Chicago: International Personnel Association, 1976.

Perry, Charles R. and Wesley A. Wildman. The Impact of Public Employee Unionism: The Evidence from the Schools. Worthington, Ohio: C. A. Jones, 1970.

Peterson, Donald J. Union Utilization of the Grievance-Arbitration Process. (Illinois Institute of Technology Doctoral Dissertation) Ann Arbor: University Microfilms, 1970.

Pops, Gerald M. Emergence of the Public Sector Arbitrator. Lexington: D.C. Heath Co., 1976.

Poushinsky, Anatole W. Introduction of Collective Bargaining in the Canadian Public Service. (Charleton University Master's Abstracts) Ann Arbor: University Microfilms, 1970.

Prasow, Paul and Edward Peters. Arbitration and Collective Bargaining. New York: McGraw Hill Book Co., Inc., 1970.

Quester, George N. The Politics of Public Sector Labor Relations: Some Predictions. Ithaca: Cornell University, 1973.

Roberts, Harold S. Labor-Management Relations in the Public Service. Honolulu: University of Hawaii Press, 1970.

Robison, James W. and Roger W. Walker. Labor Economics and Labor Relations. New York: Ronald Press, 1973.

Samuelson, Paul A. Economics, an Introductory Analysis. 5th Edition. New York: McGraw-Hill Book Co., Inc., 1976.

Saso, Carmen D. Coping with Public Employee Strikes. Chicago: Public Personnel Association, 1970.

Schein, E. H. Organizatonal Psychology. Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1965.

Searles, John W. An Analysis of Grievance Procedures for Certified Personnel. (USC Doctoral Dissertation) Ann Arbor: University Microfilms, 1971.

Seidman, Joel. Public Sector Collective Bargaining and the Administrative Process. Honolulu: University of Hawaii, Industrial Relations Center, 1972.

Shepard, Hubert A. and Jane S. Mouton. Managing Intergroup Conflict In Industry. Houston, Texas: Gulf Publishing Company, 1964.

Simpkin, William E. Mediation and the Dynamics of Collective Bargaining. Washington, DC: Bureau of National Affairs, 1971.

Slichter, Sumner H., James J. Healy, E. Robert Livernash. The Impact of Collective Bargaining on Management. The Brookings Institution, Washington, DC.

Sloane, Arthur A. and Fred Whitney. Labor Relations. Englewood Cliffs: Prentice-Hall, Inc., 1977.

Smythe, Cyrus F. Jr., Public - Private Sector Multi-Employer Collective Bargaining. Minneapolis: University of Minnesota, Industrial Relations Center, 1971.

Solana, Richard V. Labor Relations Source Book: A Guide to Resources to Management-Employee Relations in the Public Sector. Chicago: Public Personnel Association, 1970.

Somers, Gerald G. and Barbara D. Dennis. Arbitration and the Public Interest. Washington, DC: Bureau of National Affairs, 1971.

Somers, Gerald G. (Editor). Essays in Industrial Relations Theory. Ames: Iowa University Press, 1969.

Spero, Sterling D. and John M. Capozzola. The Urban Community and Its Unionized Bureaucracies. New York: Dunellen, 1973.

Spink, Geoffrey D. and Austin E. Ross. Observations on the Duty to Bargain During the Terms of an Agreement. Washington, DC: Department of the Treasury, U. S. Customs Service, 1977.

Stahl, Glenn O. The Public Personnel Function: Two Issues. Lansing: Citizen Research Council of Michigan, 1971.

Stanley, David T. Managing Local Government Under Union Pressure. Washington, DC: Brookings Institution, 1972.

Stieber, Jack. Public Employee Unionism: Structure, Growth, Policy. Washington, DC: Brookings Institution, 1975.

Sullivan, Daniel P. Public Employee Labor Law. Cincinnati: W. H. Anderson Co., 1969.

Taylor, Benjamin J. and Fred Witney. Labor Relations Law. Englewood Cliffs: Prentice-Hall Inc., 1971.

The Teamsters Union. A Shop Steward's Guide to Effective Shop Leadership. Bulingame, California: Western Conference Teamsters, 1969.

Tennessee Valley Authority. Guidelines for Union-Management Cooperative Program. Knoxville: Central Joint Cooperative Conference and Central Joint Cooperative Committee, 1971.

Management Guide for Handling Grievances of Employees Represented by the Salary Policy Employee Panel. Knoxville: Division of Personnel, TVA, 1971.

Thomas, George F. Experiments in Participation. London: Institute of Personnel Management, 1971.

Tinning, Paul P. A Guide to Hawaii Public Employee Collective Bargaining. Honolulu: Hawaii Department of Personnel Service and University of Hawaii Press, 1971.

Tracy, Estelle R. (Editor). Arbitration Cases in Public Employment. New York: American Arbitration Association, 1968.

Treacy, Vincent E. Legal Status of Unions and Collective Bargaining in the Armed Forces. Washington, DC: Congressional Research Service, 1977.

U. S. Civil Service Commission. An EEO Counselor's Handbook. Denver: Regional Training Center, Personnel Management Institute, 1972.

Collective Bargaining Proposals and Relevant Cost/Benefit Considerations. Washington, DC: Government Printing Office, 1976.

CSC/OMB Survey of the Collective Bargaining Process Under Executive Order 11491. Washington, DC: The Commission, 1974.

Discrimination Complaints Examiners Handbook. Washington, DC: Office of Federal Equal Opportunity, The Commission, 1973.

Equal Opportunity Counseling: A Handbook. Washington, DC: Office of Federal Equal Opportunity, The Commission, 1973.

Labor-Management Case Finder. Washington, DC: Federal Personnel Manual System, 1972.

Managing Under Bilateralism - A Supervisor's Guide. Washington, DC: Government Printing Office, 1976.

U. S. Civil Service Commission. Negotiations. Washington, DC: Government Printing Office, 1976.

The Role of Politics in Local Labor Relations: Does Political Action Influence Labor Agreements? Washington, DC: Labor-Management Relations Service, 1973.

U. S. Department of Agriculture. Equal Opportunity: Employee Grievances and Administrative Appeals. Washington, DC: Office of Personnel, 1972.

U. S. Department of the Army. Labor Negotiations at the Local Level. (Civilian Personnel Pamphlet No. 70) Washington, DC: U. S. Government Printing Office, 1971.

University of California At Berkeley. The Meyers-Milias-Brown and Winton Acts: Major Legal Issues in Public Employee Relations. Institute of Insurtial Relations, 1971.

Urofsky, Melvin I (Editor). Why Teachers Strike: Teachers' Rights and Community Control. New York: Doubleday, 1970.

Vagts, Christopher R. and Robert B. Stone. Anatomy of a Teacher Strike. West Nyack, New York: Parker, 1969.

Walsh, Robert E. (Editor). Sorry...No Government Today: Unions vs City Hall, An Anthology. Boston: Beacon Press, 1969.

Warner, Kenneth O. and Mary L. Hennessy. Public Management at the Bargaining Table. Public Personnel Association, Chicago, 1967.

Watkins, Thomas L. The Relations of Certain Environmental Factors to the Difficulty With Which Labor Agreements Are Negotiated in Public Employment. (University of Cincinnati Doctoral Dissertation) Ann Arbor: University Microfilms, 1971.

Weisberger, June. Examples of Language and Interpretation in Public Sector Collective Bargaining Agreements: A Guide for Public Officials and Other Interested Parties. Ithaca: Cornell University, 1974.

Wertzman, Joan. The Scope of Bargaining in Public Employment. New York: Praeger Publisher, 1975.

Williams, David G. and Don C. Hall. The Legal Status of Public Employee Strikes and Collective Bargaining in West Virginia. Morgantown: West Virginia University, 1970.

Wolfbei, Seymour L. (Editor). Collective Negotiations for Public and Professional Employees: Text and Readings. Braintree, Mass.: D. H. Marks Publishing Co., 1970.

Wollett, D. H. and Don W. Seats. Collective Bargaining in Public Employment. Washington, DC: Bureau of National Affairs, 1971.

Woloschuk, B. Z. Collective Bargaining and the Grievance Procedure in the Federal Public Service: A Self-Instructional Manual. Ottawa: Treasury Board of Canada, 1970.

Yoder, Dale. Personnel Management and Industrial Relations. 5th Edition. New Jersey: Prentice-Hall, Inc., 1962.

Personnel Management and Industrial Relations. 6th Edition. New Jersey: Prentice-Hall, Inc., 1970.

Yaffe, Byron and Howard Goldblatt. Factfinding in Public Employment in New York State. Ithaca: Cornell University, 1971.

Zeider, Frank B. New Roles for Public Officials Is in Labor Relations. Chicago: Public Personnel Association, 1970.

## III. RESOURCES AND ORGANIZATIONS

This bibliography provides management-oriented resource information in the general field of labor-management relations. Sources are various Federal agencies, institutions of higher education and private organizations which publish documents and texts and/or provide technical service and assistance, on request, in the labor/management relations area. To provide maximum utilization by the busy education manager, wherever possible, complete addresses of publishers and agencies have been coordinated with the specific resource title and incorporated into the listings. While the bibliography is not to be considered all-inclusive, school business officials and other district executives will find it very useful as a benchmark in their continuing research and study of the field of labor-management relations in both private and public sectors.

AMERICAN ARBITRATION ASSOCIATION, 1819 H Street N.W., Washington, D.C. 20006

Labor Arbitration in Government. Monthly summary of arbitration awards and fact-finding recommendations involving government agencies.

### INSTITUTIONS OF HIGHER LEARNING

The following institutions of higher learning have continuing education services and academic programs in the field of labor-management relations. Some of these institutions have separate academic areas concerned with labor studies. Many of these institutions publish periodicals and newsletters in the field of labor-management relations concerned with both public and private sectors. It is not to be assumed that this is an all-inclusive listing. It is suggested that contact be made at the user's local university for additional institutional names and other resource information.

Cornell University, New York State School of Industrial and Labor Relations, Ithaca, NY 14850.

Federal City College, Center for Labor Studies, 425 Second St. N.W., Washington, D. C.

Indiana University, Labor Education and Research Center, Division of University Extension, 201 Owen Hall, Bloomington, Indiana 47401.

Massachusetts Institute of Technology, Sloan School of Management Industrial Relations Section, Cambridge, Mass. 02130.

Michigan State University, Institute of Labor and Industrial Relations, 108 Museum Annex, Ann Arbor, Michigan 48104.

Michigan State University, School of Labor and Industrial Relations, South Kedzie Hall, East Lansing, Michigan 48823.

Ohio State University, Labor Education and Research Center, 61 South Oval Drive, 661 Page Hall, Columbus, Ohio 43210.

Pennsylvania State University, Department of Labor Studies, 160 Burrowes North, University Park, Pennsylvania 16802.

Roosevelt University, Labor Education Department, 430 South Michigan Ave., Chicago, Illinois 60640.

Rutgers, The State University, Labor Institute, New Brunswick, New Jersey.

University of California, Los Angeles, Institute of Industrial Relations, University of California, Los Angeles, California 90024.

University of Colorado, Center for Labor Education and Research, Boulder, Colorado 80302.

University of Connecticut, Labor Education Center, Storrs, Connecticut 06268.

University of Hawaii, Institute of Industrial Relations, Honolulu, Hawaii 96822.

University of Illinois, Institute of Labor and Industrial Programs, LaSalle Hotel, Room 222, 10 North LaSalle Street, Chicago, Illinois 60606.

University of Kentucky, Development Services Labor Education Center, College of Business and Economics, Lexington, Kentucky 40506.

University of Maine, Bureau of Labor Education, 94 Bedford Street, Portland, Maine 04102.

University of Massachusetts, Labor Relations and Research Center, 100 Arlington Street, Boston, Mass. 02116.

University of Minnesota, Industrial Relations Center, 423 B.A. Tower, Minneapolis, Minnesota 55455.

University of Missouri, Labor Education Program, 301 Whitten Hall, Columbia, Missouri 65201.

University of Puerto Rico, Labor Relations Institute, Box BH, U.P.R. Station, Rio Pedres, Puerto Rico 00931.

University of Wisconsin, Institute of Industrial Relations, Madison, Wisconsin 53706.

Virginia Polytechnic Institute, Labor Education Program, Pamplin Hall, Blacksburg, Va. 24601.

Wayne State University, Division of Labor Education and Services, 5229 Cass Ave., Detroit, Michigan 48202.

West Virginia University, Institute for Labor Studies, Appalachian Center, Morgantown, W. Va. 26506.

BUREAU OF NATIONAL AFFAIRS, 1231 - 25th Street NW, Washington, D. C. 20037

The Bureau offers numerous subscription services in the general area of Labor Relations as well as books and proceedings in the field. Published by the Bureau are the following:

Bulletin to Management. The Weekly Bulletin Summarizes development, examines employee relations situations, and provides valuable charts, graphs and statistics. This is an indexed binder publication.

Bureau of National Affairs Policy and Practices. For employee relations executives. Covers latest developments in personnel management, labor relations, fair employment practices, and wages and hours.

Collective Bargaining Negotiations and Contracts. Biweekly coverage of wage rates and data, cost of living figures, bargaining issues, significant settlements, industry facts and figures, and salary controls. This is an indexed binder publication.

Construction Labor Report. Weekly indexed report on union management developments in the construction labor field.

Daily Labor Report. Coverage of all significant developments in the labor field each working day (Monday thru Friday). Special supplements, and copies of the four-page topical summary for quick scanning and routing to other executives.

Fair Employment Practice Service. Service covering federal and state laws dealing with equal opportunity in employment. Supplements issued every other week, along with a newsletter. Indexed binder.

The Labor Relations Reporter. Reporter is a combination of binder series, reference volumes and Labor Relations yearbooks which can be purchased in a set or individually. The Reporter provides "(1) comprehensive coverage on new developments in the field (2) quick answers to urgent questions and problems (3) complete research facilities....."

BINDER SERIES include:

Analysis - News and Background Information - Coverage of most important developments in the labor-management relations field.

Fair Employment Practice Manual and Cases

Labor Arbitrations - Weekly reports of labor disputes settlements.

Labor-Management Relations - Weekly coverage of National Labor Relations Board's rulings and full texts of federal and state court decisions.

State Laws - State labor laws.

The Expediter - Annotated discussions of the developments and current status of every topic of importance in the field, leading cases and rules, and texts of laws and regulations.

Wages and Hours

Wage and Salary Controls

REFERENCE VOLUMES includes:

Labor Arbitration Reference Volumes and Digests - Arbitration cases transfered to hard cover volumes for reference purposes. All the sections of Labor Relations References are fully indexed. Available separately or in combination to meet individual needs.

Labor Relations Reference Manuals, Digests and Yearbooks - Three sets of volumes containing all labor relations developments throughout the years.

The Government Manager - Bi-weekly bulletin concentrating on day-to-day problems and "how to" information for government supervisors.

Manpower Information Service - Bi-weekly notification and reference service. Provides technical assistance on effective utilization of human resources, including where and how to apply for training funds and how to develop successful programs.

Wages and Hours Reference Cases and Digests - Wage and hour cases transfered to hard cover volumes for reference purposes.

COMMERCE CLEARING HOUSE, INC., 425 - 13th Street N.W., Washington, D.C. 20004

The House published journals, books and subscription services on labor-management relations.

Employment Practices Unit of Labor Law Reports. Bi-weekly report on Federal and State Fair employment practice requirements; Civil Rights Acts and State Fair Employment Law Provisions; Equal Employment Opportunity Commission regulation, rulings, and decisions. Two bound volumes per year.

Labor Arbitration Awards. Both weekly reports and bound volumes. Weekly reports of current labor arbitration awards and weekly summaries. Bound volumes cover past years starting in 1961.

Labor Cases. Federal and state court decisions on labor problems, 48 bound volumes, 1937 to 1972, 2 new volumes per year.

Labor Law Course. Explanation of Labor Law, union, labor relations, wage-hour laws with problems and solutions. Complete as issued, no reports.

Labor-Law Guide. Weekly report of statutes, wage-hour controls, fair employment, Government contract labor law, and cost of living index.

Labor Law Journal. Monthly journal of articles, notes, comments on labor and labor laws.

Labor Law Reports. With or without employment practices. Weekly report on labor relations, statutes, fair employment regulations, National Labor Relations Board decisions, court decisions, state labor laws, and union contract clauses.

Labor Law Summary. Weekly review of current labor law.

Labor Relations Unit Only. Weekly report - a unit of Labor Law Reports. Federal Labor relations and union control rules explained and annotated with digests of court and National Labor Relations Board cases; Federal statutes, regulations, and forms.

Personnel Guide. Bi-weekly. Solutions to employer-employee personnel problems. Personnel Directory, editorial commentary. Topical index.

Retail Labor Report. Weekly report for management and unions in the retail field. Covers personnel administration, legislature developments, wage and salary controls, union organizing, collective bargaining, equal opportunity and job safety. Indexed.

Security & Loyalty Reporter. Analysis of industrial and governmental security policies and practices. Includes a monthly newsletter covering developments in employee discipline, shoplifting, bomb threats, computer sabotage and document control. Indexed.

Union Labor Report. For Union officials at all levels, covers union information and problems. Digests hundreds of arbitration cases. Includes bi-weekly supplements and weekly eight-page newsletter featuring labor facts, grievance guides and special reports. Indexed.

Wages - Hours Unit Only. Weekly report, a unit of Labor Law Reports. Federal wage and hour controls with court decisions; Federal statutes, regulations, policy and statements; and Government contract labor rules.

White Collar Report. Weekly report concerning clerical, technical, scientific, professional and other white collar employees. Indexed.

FEDERAL LABOR RELATIONS COUNCIL, 1900 E. Street N.W,. Washington, D.C. 20415

Published by the Council are the following:

Rules of the Federal Labor Relations Council. Published as Title 5, Chapter XIV, subchapter B, Code of Federal Regulations.

Information Announcements. Releases of current interest.

Reports of Case Decisions by the Council.

FEDERAL MEDIATION AND CONCILIATION SERVICE, Washington, D.C. 20427

The Service publishes regularly publications on its activities in resolving negotiation impasses and its role in providing preventive mediation in the form of educational services.

FEDERAL SERVICE IMPASSES PANEL, 1900 E. Street N.W., Washington, D.C. 20415

Published by the Panel are the following:

Panel Releases. (Summary of the Panel's Cases)

Rules and Regulations of the Panel.

INTERNATIONAL PERSONNEL MANAGEMENT ASSOCIATION, Room 240, 1313 East 60th Street, Chicago, Illinois 60637

The Association is responsible for two publications in the field:

Personnel News. Monthly newsletter reports recent developments in personnel administration in the public sector.

Public Personnel Management. Journal of articles expressing views and contributing authors, in the field of Personnel Management and Labor Relations. It is published bi-monthly.

NATIONAL LEAGUE OF CITIES, Labor-Management Relations Serivce, 1620 Eye Street N.W., Washington, D.C. 20006

Published by the National League is the following:

The Labor-Management Relations Service Newsletter. Monthly newsletter which features up-to-date state and local labor-management news, articles, and comments.

National Association of Educational Negotiators.
1400 Massachusetts Ave., New Port Richey, Florida 33552.
813-842-4311

National Association of Public Employer Negotiators and Administrators.
65 East Scott Street, Suite 7D, Chicago, Illinois 60610.
312-280-9350

## PUBLISHERS

BAYWOOD PUBLISHING COMPANY, INC., 43 Central Drive, Farmingdale, NY 11735

Published is the following:

Journal of Collective Negotiations in the Public Sector. Journal of public sector collective bargaining essays submitted by authors in the field.

PRENTICE HALL, 1701 Pennsylvania Ave. NW, Washington, D. C. 20006

Published are the following:

Public Personnel Administration - Labor Management Relations. Bi-weekly reports with up-to-date information on new developments in the public sector. Also contains articles by experts in the field, collective bargaining problems and answers, public sector laws and regulations, grievances and arbitrations, and union contract clauses. Indexed.

Public Personnel Administration - Policies and Practices for Personnel. Coverage includes such areas as hours of work and leaves, new ideas, training and development, selection of personnel, organization and administration of Public Personnel systems. promotions and transfers, wage and salary management, employee benefits, motivation - handling disciplinary problems, and Federal Government initiatives in public employment. Indexed.

PRIVATE SECTOR

Industrial Relations. Bi-weekly reports, latest contract settlements, current articles, employer bargaining problems, union contracts, arbitration awards analysed. Indexed.

Payroll Administration. Information on the following topics: wages, federal income tax withholding, social security taxes and benefits, federal unemployment tax, state unemployment and disability, and the federal wage and hour law. Indexed.

Personnel Relations - Communications. Frequent reports, work hours, holiday and vacations, absences, solving payroll problems, successful plant and office rules, protecting employee health and safety, how to prepare an employee manual and more.

Personnel Management - Labor Relations. Weekly reports, wages and hours, equal pay law, laws and regulations, employee relations guide, cost of living index, fair employment practices, bargaining with unions and more. Indexed.

Personnel Management - Policies and Practices. Frequent reports, hiring practices, training, working hours, holidays and vacations, absenteeism, promotions and transfers and terminations, discipline and grievances, working conditions, job evaluation, supervisors, and more. Indexed.

Wage - Hour Guide. Bulletin on money suggestions, equal pay-law and explanation, wage-hour law, interpretative bulletins, who is covered, who is exempt, overtime, records - investigation, and government contracts. Indexed.

UNITED STATES CIVIL SERVICE COMMISSION, Bureau of Labor Statistics,
Washington, D.C. 20210

Published are the following:

Employment and Earnings. Monthly publication containing statistics and data on employment and earnings for each month. Ordered through the U.S. Government Printing Office, Washington, D.C. 20402.

Monthly Labor Review. Monthly magazine containing articles on relevant topics in the field and monthly summaries of developments in industrial relations, significant decisions in labor cases, current labor statistics and book reviews. Order through the Regional Offices of the Bureau or order through the Superintendent of Documents, Government Printing Offices, Washington, D.C. 20402.

Statistical Surveys. Subjects of interest to persons engaged in labor management relations.

UNITED STATES CIVIL SERVICE COMMISSION, Division of Public Employee Labor Relations, Washington, D.C. 20210

Under its Public Sector Labor Relations Information Exchange, many issues of current interest to public sector labor relations are explored and monographs of research findings are published. Published are the following:

Scope of Bargaining in the Public Sector-Concepts and Problems.

Dispute Settlement in the Public Sector: The State of the Act.

State Profiles: Current Status of Public Sector Labor Relations.

Current References and Information Service for Policy.

Decision-Making in State and Local Government Labor Relations: A Selected Bibliography.

UNITED STATES CIVIL SERVICE COMMISSION, Office of Labor-Management Relations, 1900 East Street NW, Washington, D.C. 20210

Published are the following:

Reports of the Secretary, Labor-Management Relations.

Regulations of the Secretary, Labor-Management Relations, Title 29 U.S. Code of Federal Regulations. Reprinted in FPM Supplement 711-1.

The Federal Labor Management Consultant. Bi-weekly publication which provides a rapid and regular flow of information to parties interested in the Federal Labor Relations program. Order through Government Printing Office, Washington, D.C. 20402.

Union Recognized in the Federal Government - Statistical report and listing by agency of formal and exclusive recognition and agreements. under Executive Order 11491. (Order through Superintendent of Documents Government Printing Office, Washington, D.C. 20402).

UNITED STATES DEPARTMENT OF COMMERCE, 15th Street & Constitution Ave. N.W., Washington, D.C. 20230

The Department publishes numerous reports and statistical surveys on subjects of interest to persons engaged in labor-management relations.

UNITED STATES DEPARTMENT OF LABOR, Office of the Assistant Secretary, Labor-Management Relations, Washington, D.C.

Published are the following:

Decisions of the Assistant Secretary, Labor-Management Relations. With summaries.

Digest and Index of Published Decisions, Assistant Secretary, Labor-Management Relations. Order through Government Printing Office, Washington, D.C. 20402

## FILMS ON PUBLIC SECTOR COLLECTIVE BARGAINING

ANATOMY OF A GRIEVANCE. U. S. Civil Service Commission. 1974. 22 min.

Distributed by U.S. National Audiovisual Center. Depicts the processing of an employee grievance over interpretation and application of an agreement clause. The setting is a public hospital.

ARBITRATION OF A GRIEVANCE. U.S. Civil Service Commission. 1974. 36 min.

Distributed by U.S. National Audiovisual Center. As a sequel to "Anatomy of a Grievance" teaches persons handling arbitration cases the techniques of preparation and presentation.

AT THE TABLE. U. S. Civil Service Commission. 1974. 46 min.

Distributed by U.S. National Audiovisual Center. A simulated public sector negotiations session involving the issues of subcontracting and work schedules.

BUTTON, BUTTON. U. S. Department of Labor. 1975. 29 min.

Distributed by U. S. National Audiovisual Center. A dramatization of a grievance procedure at the second level in which a tax assessor is given a disciplinary layoff for refusing to remove a button supporting a tax increase bill.

CASE OF THE LOST FRINGE BENEFIT. American Arbitration Association. 1971. 20 min.

An arbitration in a municipal water works plant concerning the discontinuance of a fringe benefit. Questions raised are the arbitrability of the dispute and the right of the city to discontinue the benefit.

CITY-UNION POWER NOW. WGBH-TV (Boston, Mass.). 1969. 58 min.

Distributed by Reeves Broadcasting Corp. (New York). Public Sector collective bargaining at the municipal level dramatized with a discussion of issues by labor relations experts. A five-minute trailer on New Jersey's Chapter 303 is added.

COUNTDOWN TO A CONTRACT. CBS-TV. 1970. 30 min.

The actual filming of the final days of a dispute and negotiations between the League of New York Hospitals and Union Local 1199.

DRAMA COACH GRIEVANCE. American Arbitration Association. 1972. 20 min.

An arbitration of a grievance involving a teacher who was denied promotion to chairperson of the English department in her school.

THE DYNAMICS OF NEGOTIATIONS IN PUBLIC EDUCATION. Educational Service Bureau.

1970. 45 min. Negotiating teams from a school board and a teachers' group illustrate the techniques of contract negotiations.

SOLVING IMPASSES IN EDUCATIONAL INSTITUTIONS. Educational Service Bureau.

1970. 35 min. Portrays the use of a third party to resolve differences that occur during contract negotiations.

TROUBLE IN THE FIREHOUSE. American Arbitration Association. 1973 . 26 min.

Produced for the International Association of Firefighters, this film concerns an arbitration arising out of a city's decision to call a moratorium on new hiring and the union's claim that the failure to fill the manning tables is a violation of the contract.

VIEWS FROM THE WORKPLACE. U.S. Department of Labor. 1975. 23 min. Distributed by U.S. National Audiovisual Center. Illustrates different grievances and how they are handled through eight situations taking place in various types of state and local employment.

## COLLECTIVE BARGAINING GAMES

BNA's Collective Bargaining Game
Bureau of National Affairs
1231 25th Street, N.W.
Washington, D.C. 20037

Collective Bargaining
Didactic Systems, Inc
Box 457
Cranford, N.J. 07016

Contract Negotiations
The Macmillan Company
866 Third Avenue
New York, N.Y. 10005

IRC's Collective Bargaining Game
Industrial Relations Counselors, Inc.
1 Wall Street
New York, N.Y. 10005

Grievance Handling (Industrial)
Didactic Systems, Inc.
Box 457
Cranford, N.J. 07016

Grievance Handling (Non-Industrial)
Didactic Systems, Inc.
Box 457
Cranford, N.J. 07016

Professional Negotiations in Education
Charles E. Merrill Publishing Company
1300 Alum Creek Drive
Columbus, Ohio 43216

Settle or Strike
Games Central
ABT Associates
55 Wheeler Street
Cambridge, Mass. 02128

Strike
The Macmillan Company
866 Third Avenue
New York, N.Y. 10022

# CONTRIBUTORS

## CONTRIBUTORS

Allen, Nolan E., RSBA, Formerly Business Manager, Indianapolis Public Schools, Indianapolis, IN; now Retired.
Contributor to original 1977 manuscript draft.

Barnett, Richard, RSBA/RSBO, Business Manager, Woodhaven School District, Romulus, MI.
Contributor to original 1977 manuscript draft.

Blacka, Alan, Director of Personnel, Mt. Lebanon School District, Mt. Lebanan, PA.
Contributor to original 1977 manuscript.

Buchner, Edward C., RSBA, Assistant Superintendent, Bloom Township High School, Chicago Heights, IL.
Contributor to original 1977 manuscript draft.

Donato, Samuel, RSBA, Business Manager, Wantaugh School District, Wantaugh, NY.
Contributor to original 1977 manuscript draft; Chairman, 1977 ASBO Negotiations Research Committee.

Foley, Leland L., RSBA, Assistant Superintendent, Business, Cartwright School District, Phoenix, AZ.
Contributor to 1980 Sourcebook.

Grogan, John L., Assistant Superintendent, Waynesboro School District, Waynesboro, PA.
Chairman, Negotiations Source Book Completion - Revision Subcommittee.
Contributor to 1980 Sourcebook.

Gwiazdowski, Edward F., RSBA, Business Manager, Alma Public Schools, Alma, MI.
Contributor to 1980 Sourcebook and original 1977 manuscript draft; Member, Negotiations Source Book Completion - Revision Subcommittee.

Hill, Frederick W., RSBA/RSBO, Past ASBO President (1964), Formerly Superintendent, Hicksville Public Schools, Hicksville, NY.
Contributor to 1980 Sourcebook and original 1977 manuscript draft; Member, Negotiations Source Book Completion - Revision Subcommittee.

Keough, John J., Administrator, Beauville School District, Beauville, NY.
Contributor to 1980 Sourcebook and original 1977 manuscript draft.

Kohler, Lewis T., RSBA, Educational Consultant, North Hollywood, CA.
Contributor to 1980 Sourcebook and original 1977 manuscript draft; Chairman, ASBO Negotiations Research Committee; Member, Negotiations Source Book Completion - Revision Subcommittee.

Leary, William J., Jr., Superintendent of Schools, Waynesboro Area School District, Waynesboro, PA.
Contributor to 1980 Sourcebook.

Loedel, Charles F., Director, Business Affairs, Brighton Central Schools, Rochester, NY.
Contributor to 1980 Sourcebook; Member, Negotiations Source Book Completion - Revision Subcommittee.

Lukinchook, John, Formerly Assistant Superintendent, Business Affairs, Levittown Union Free School District, North Village Green, NY; now Retired.
Contributor to original 1977 manuscript draft.

Morgenson, L. R., Assistant Superintendent, Business, Community United Schools #100, Belvidere, IL.
Contributor to original 1977 manuscript draft.

Moyer, Linford F., RSBA, Assistant Superintendent, Business, Pottstown School District, Pottstown, PA.
Contributor to 1980 Sourcebook.

Nightingale, H. M., Director, Economic & Legislative Services, The Ontario School Trustees' Council, Ontario, Canada.
Contributor to 1980 Sourcebook.

Poll, Dwayne C., Assistant Superintendent, Business Affairs, Uniondale Public Schools, Uniondale, NY.
Contributor to 1980 Sourcebook; Member, Negotiations Source Book Completion - Revision Subcommittee.

Porter, Harold T., RSBA, Formerly Assistant Superintendent, Finance & Planning, Orleans Parish School Board, New Orleans, LA; now Retired.
Contributor to original 1977 manuscript draft.

Radunzel, Robert, Assistant Superintendent, Greenville Public Schools, Greenville, MI.
Contributor to original 1977 manuscript draft.

Rellis, Charles N., RSBA/RSBO, Business Manager, School District #170, Chicago Heights, IL.
Contributor to 1980 Sourcebook.

Romett Thomas P., RSBA, Assistant Superintendent, Butler Area School District, Butler, PA.
Contributor to 1980 Sourcebook and original 1977 manuscript draft.

Scott, William H., Director, Staff Relations, Anne Arundel County Public Schools, Annapolis, MD.
Contributor to 1980 Sourcebook; Member, Negotiations Source Book Completion - Revision Subcommittee.

Smith, Blaine, Assistant Superintendent for Instruction, Broken Arrow Public Schools, Broken Arrow, OK.
Contributor to 1980 Sourcebook.

Smith, Joseph, Associate Superintendent, South San Francisco Unified Schools, South San Francisco, CA.
Contributor to original 1977 manuscript draft.

Toranto, Richard J., Director of Staff Relations, Hartford County Public Schools, Bel Air, MD.
Contributor to 1980 Sourcebook.